> case, either party may ask the district court to appoint a new arbitrator. . . . That section would never have any room to operate, however, if every time an unanticipated vacancy occurred, the clock were automatically set back to zero.[12]

Wellpoint involved a three-member arbitration panel, but its reasoning can be applied to sole arbitrator cases. In fact, the terms of FAA section 5 suggest its applicability to a single arbitrator, as Section 5 provides for one arbitrator unless the parties have agreed otherwise.

With some narrow exceptions, modern arbitration rules generally give the replacement arbitrator the discretion to repeat any of the proceedings. However, arbitration rules are suppletive, and the parties may agree to repeat the proceedings in their entirety or to proceed with whatever information available to the replacement arbitrator. The modern approach gives appropriate leeway to the replacement arbitrator and appropriate deference to the will of the parties. The RUAA, which has been adopted by 22 states and the District of Columbia,[13] provides for this balance. Where it pertains to mid-proceedings replacement of a sole arbitrator, the RUAA would be an appropriate choice for Louisiana.

2. The two remaining panel members on a three-member panel may have the discretion to conclude the proceedings without a replacement.

As with single arbitrators, the rules governing arbitration proceedings overseen by a three-member panel may be amended by contract. As such, parties that plan for the contingency of a panel member being incapacitated will be in the best position to dictate how to proceed should that situation arise. Under the FAA and state law, along with the rules of various arbitration organizations, the default response to the incapacity of a member depends on the circumstances and nature of the incapacity.

In *Marine Prod. Exp. Corp. v. M.T. Globe Galaxy*, 977 F.2d 66 (2d Cir. 1992), the U.S. Court of Appeals for the Second Circuit declared a "general rule" for the scenario in question: "where one member of a three-person arbitration panel dies before the rendering of an award and the arbitration agreement does not anticipate that circumstance, the arbitration must commence anew with a full panel."[14] However, other Circuits have not been willing to adopt or extend this rule. For example, when a defendant insurance company claimed that the Second Circuit "general rule" applies "whenever a vacancy is created before a full and final award has been entered and the arbitration agreement has not anticipated the precise situation that arose,"[15] the Seventh Circuit

[12] *WellPoint, Inc. v. John Hancock Life Ins. Co.*, 576 F.3d 643, 646–47 (7th Cir. 2009).

[13] UNIFORM LAW COMMISSION, ARBITRATION ACT, https://www.uniformlaws.org/committees/community-home?CommunityKey=a0ad71d6-085f-4648-857a-e9e893ae2736 (last visited July 20, 2022).

[14] *Marine Prod. Exp. Corp. v. M.T. Globe Galaxy*, 977 F.2d 66, 68 (2d Cir. 1992).

[15] *WellPoint, Inc. v. John Hancock Life Ins. Co.*, 576 F.3d 643, 647 (7th Cir. 2009).

replied that it "find[s] no such inflexible and wasteful rule in the law of arbitration."[16] Instead, the Seventh Circuit pointed to 9 U.S.C. § 5 for how to address a "mid-term vacancy."[17]

> Section 5 anticipates the problem of a vacancy after the arbitration is underway, and it also anticipates the possibility that the parties may not have set forth a method for filling that vacancy. In such a case, either party may ask the district court to appoint a new arbitrator. The *Marine Products* court did not discuss § 5 in its brief opinion. That section would never have any room to operate, however, if every time an unanticipated vacancy occurred, the clock were automatically set back to zero.[18]

Even the Second Circuit declined to extend the "general rule" beyond the circumstances of the *Marine Products* case.

> The rationale behind the Marine Products rule is that it is unfair to require a party to continue an arbitral proceeding after its chosen arbitrator has died, because the party would be disadvantaged by having a substitute join the remaining panel members after they had "worked together and been exposed to each other's influence," and after the deceased arbitrator has had some subtle and unknowable effect on them. *See CIA De Navegacion Omsil, S.A. v. Hugo Neu Corp.*, 359 F.Supp. 898, 899 (S.D.N.Y.1973). The rule is therefore premised on the notion that the unfairness to a party of having a substitute arbitrator appointed who will likely be disadvantaged because of his or her absence during previous deliberations outweighs the necessary waste and expense of commencing an arbitration completely anew.
>
> ***
>
> [S]uch a rigid rule should not be extended to resignations.
>
> ***
>
> We hold that, in dealing with vacancies resulting from resignations, the *Marine Products* rule does not apply, and district courts should

[16] *Id.*

[17] *Id.*

[18] *Id.*

> use their power pursuant to 9 U.S.C. § 5 in deciding how to proceed.[19]

a. Jurisdictional and evolving rules.

Rules on arbitrator vacancy have changed over the years. As cited above in the *Loomis* case, the AAA Construction Arbitration Rules at one time required that a matter be reheard when a mid-term arbitrator vacancy occurred, unless the parties agreed otherwise.[20] The modern rule is more flexible:

> R-22. Vacancies
>
> (a) If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules.
>
> (b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.
>
> (c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.[21]

The AAA Commercial and Employment arbitration rules resemble the Construction rule. In contrast, JAMS International Arbitration Rules provide that the organization will make the call:

> 10.1 [I]f an arbitrator dies or, in JAMS' sole discretion, becomes unable to act, a substitute arbitrator will be appointed pursuant to the provisions of Article 10.3, unless the parties otherwise agree on another procedure.
>
> 10.2 If a substitute arbitrator is appointed under this Article, JAMS, after consultation with the parties and the remaining members of the Tribunal, will determine in its sole discretion whether all or part of any prior hearings will be repeated.

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[19] *Id.*

[20] *Loomis, Inc. v. Cudahy*, 656 P.2d 1359, 1379 (1982).

[21] AAA, Construction Industry Arbitration Rules and Mediation Procedures (May 1, 2022), R-22.

> 10.3 … Where the Tribunal consists of three or more arbitrators, JAMS may decide that the remaining arbitrators will proceed with the case. Prior to making such a decision, the views of the parties and the remaining arbitrators will be solicited.[22]

JAMS Comprehensive Arbitration Rules provide:

> If a member of a panel of Arbitrators becomes unable to fulfill his or her duties after the beginning of a Hearing but before the issuance of an Award, a new Arbitrator will be chosen in accordance with this Rule, unless, in the case of a tripartite panel, the Parties agree to proceed with the remaining two Arbitrators.[23]

CPR also allows the two remaining arbitrators to continue the proceedings:

> If an arbitrator on a three-person Tribunal fails to participate in the arbitration, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of the third arbitrator to participate, unless the parties agree otherwise. In determining whether to continue the arbitration or to render any decision, ruling or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case.[24]

Section five of the RUAA provides: "If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy."[25] The New York Stock Exchange (NYSE) arbitration rules provide:

> In the event that any arbitrator, after the commencement of the first hearing session and prior to the rendition of the award, should

[22] JAMS, International Arbitration Rules (June 1, 2021), Articles 10.1–10.3.

[23] JAMS, Comprehensive Arbitration Rules (June 1, 2021), Rule 15(g). *See also* JAMS, Construction Arbitration Rules (June 1, 2021), Rule 15(g).

[24] International Institute for Conflict Prevention & Resolution, Inc., Administered Arbitration Rules (Mar. 1, 2019), Rule 7.12. CPR's International Arbitration Rules and Patent & Trade Secret Arbitration Rules have similar provisions.

[25] National Conference of Commissioners on Uniform State Laws, Uniform Arbitration Act (revised Dec. 13, 2000), Section 5(c).

> resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of the vacancy on the panel.[26]

As attested by the various arbitration resources above, the general default is for the remaining members of a panel to continue the proceedings without the incapacitated member. These rules generally apply when the panel is made up of neutral arbitrators. In some situations, each party selects a non-neutral arbitrator to sit on a tripartite panel with a neutral arbitrator. "If a party-appointed, non-neutral arbitrator is unable to serve, then the appointing party must appoint a substitute."[27]

In some circumstances, some states have stricter rules. When an arbitrator in an environmental dispute in California is incapacitated, California environmental regulations demand the arbitrator be replaced and "the merits of the matter shall be reheard unless otherwise agreed to by the parties."[28] North Carolina's International Commercial Arbitration law mandates replacement of an arbitrator whose "mandate terminates for any reason" and the decision to repeat the hearings is left to the discretion of the tribunal, unless the presiding arbitrator is replaced, in which case "any hearings previously held shall be repeated."[29]

b. Ongoing hearings versus completed hearings.

Rules allowing the remaining arbitrators on the panel to continue the proceedings if a vacancy develops generally do not distinguish where along the spectrum of "after the commencement of the first hearing session and prior to the rendition of the award"[30] the rule applies. If the arbitration ruling would be determined by the majority of the three-person panel, it is fair for two of the three to conclude the matter when one member is unable to continue, including when all that is left to do is issue the ruling.[31]

For the rules that preclude moving forward with the remaining panel members, the stage of the proceedings may be relevant to the decision of whether to appoint a substitute or reconstitute the panel and start fresh. In *Trade & Transport, Inc. v. Natural Petroleum Charterers Inc.*, 931

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[26] New York Stock Exchange, NYSE Regulations (April 6, 2007), Rule 611(a).

[27] Thomas H. Oehmke and Joan M. Brovins, Commercial Arbitration (July 2022 update), Section 72:8, Thomson Reuters.

[28] Cal. Code Regs. tit. 27, § 28016.

[29] N.C. Gen. Stat. § 1-567.45.

[30] NYSE Rule 611(a).

[31] *Cf. MMR-Radon Constructors, Inc. v. Cont'l Ins. Co.*, 97-0159 (La. App. 1 Cir. 3/3/98), 714 So. 2d 1, 6, *writ denied*, 98-1485 (La. 9/4/98), 721 So. 2d 915.

F.2d 191 (2d Cir.1991), the Second Circuit found that the original panel of arbitrators had reached a final decision on the first phase of a bifurcated arbitration proceeding before one of the arbitrators died. Subsequently, the district court appointed a substitute to continue with the second phase and did not require the reconstituted panel to rehear the first phase.[32] The Second Circuit affirmed the district court's decision, even though the arbitration proceedings were on-going, because "the liability question was no longer pending, that decision was final, and the panel was without power to revisit that question."[33] Where deliberations between the arbitrators have concluded, there should be no need to replace the incapacitated arbitrator after the hearing unless the remaining arbitrators stalemate or the parties agree otherwise.

CONCLUSION

Arbitration rules are generally flexible enough to allow the arbitration organization, arbitration panel, the parties, or the court discretion in how to approach an arbitrator vacancy after the arbitration proceedings have commenced. For single arbitrator proceedings, most rules allow the replacement arbitrator to determine whether any proceedings need to be reheard. For multiple arbitrator panels comprised of neutral arbitrators, most modern arbitration rules allow the surviving panel members to conclude the matter. If the governing body or the parties determine the vacancy needs to be filled, most rules allow the reconstituted panel to decide what and how much to rehear. The U.S. Second Circuit Court of Appeals has a general rule that, if the parties have not agreed in advance on a solution to a mid-term vacancy and one arbitrator on a three-member panel dies, the arbitrator must be replaced, and the proceedings started anew. Other jurisdictions have not endorsed this approach. However, at least one arbitration organization indicates that if the chief arbitrator is incapacitated, it is necessary to restart the proceedings. When the parties have selected non-neutral arbitrators and a non-neutral arbitrator is incapacitated, the party that appointed the incapacitated arbitrator must appoint a replacement within a reasonable time to continue the proceedings.

POSSIBLE PROPOSAL LANGUAGE

Based on the above information, I have compiled possible provision language to address the issue of arbitrator vacancy. The language below has been adapted from the UAA, from the FAA, from other states, and from arbitration organizations.

3. Sole arbitrator

a. If an arbitrator ceases or is unable to act because of death, illness, injury, conflict of interest, or any other reason, after the commencement of the arbitration

[32] *Trade & Transport, Inc. v. Natural Petroleum Charterers Inc.*, 931 F.2d 191 (2d Cir.1991).

[33] *Marine Products Export Corp. v. M.T. Globe Galaxy*, 977 F.2d 66, 68 (1992).

proceeding, up to and including the conclusion of the hearings but prior to an award, a replacement arbitrator shall be appointed in accordance with [the section governing selection of the arbitrator] to continue the proceeding and to resolve the controversy, unless the arbitration agreement provides otherwise.[34]

b. If for any other reason there is a lapse in replacing the incapacitated arbitrator, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator who shall act under the arbitration agreement with the same force and effect as if he had been specifically named therein. [35]

c. The replacement arbitrator shall decide the extent to which any previously held hearings shall be repeated unless the arbitration agreement provides otherwise. [36]

4. Three-member panel

a. If an arbitrator on a three-member arbitration panel fails to participate in the arbitration without good cause or becomes unable to act as arbitrator because of death, illness, injury, or any other reason during the arbitration proceeding, up to and including the conclusion of the hearings but prior to an award, the remaining arbitrators on the panel shall have the power in their sole discretion to continue the arbitration and to make any award, order, or other decision unless a party objects within five (5) days or the parties have agreed otherwise.[37]

b. In determining whether to continue the arbitration or to render any award, order, or other decision without the participation of the third arbitrator, the other two arbitrators shall consider the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation, and the relevant circumstances of the case. [38]

---

[34] Adapted from UAA provisions in other states. *See, e.g.,* Colo. Rev Stat § 13-22-215 (2016); Ariz. Rev. Stat. § 12-3015; Fla. Stat. § 682.06; Nev. Rev. Stat. 38.231; N.J. Stat. 2A:23B-15; 42 Pa. Cons. Stat. § 7321.16; W. Va. Code, § 55-10-17. The way I have written this does not apply to vacancies that arise

[35] Adapted from 9 U.S.C. § 5.

[36] Adapted from International Institute for Conflict Prevention & Resolution, Inc., Administered Arbitration Rules (Mar. 1, 2019) (emphasis added).

[37] Adapted from International Institute for Conflict Prevention & Resolution, Inc., Administered Arbitration Rules (Mar. 1, 2019), Rule 7.12; AAA, Construction Industry Rules and Mediation Procedures (May 1, 2022), R-22; and NYSE Rule 611(a).

[38] Adapted from International Institute for Conflict Prevention & Resolution, Inc., Administered Arbitration Rules (Mar. 1, 2019), Rule 7.12.

c. If the arbitration panel, a party, or the court deems it necessary to replace the incapacitated arbitrator, the court shall declare the position vacant on application from a party or the panel. On declaration of the vacancy, proceedings shall stop until a replacement arbitrator is appointed. The replacement arbitrator shall be appointed in accordance with [the section governing selection of the arbitrator] or under the terms of the agreement, if applicable. If for any reason there is a lapse in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint a replacement arbitrator to the panel who shall act with the same force and effect as if he had been specifically named in the parties' arbitration agreement. In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion, after consultation with the parties, whether it is necessary to repeat all or part of any prior hearings.[39]

d. If a party-appointed, non-neutral arbitrator is unable to serve, then the appointing party must appoint a substitute within a reasonable time [timeframe could be 30 or 60 days from the time the party receives notice of the incapacity], subject to the above provision governing a lapse in filling a vacancy.[40]

e. If the sole neutral arbitrator on a three-member panel is replaced after the commencement of the proceedings, the successor shall decide the extent to which any previously held hearings shall be repeated.[41]

I believe the above provisions cover the scenario we discussed. If you have questions about the findings or proposed language in this document, please let me know.

JP:

[39] Adapted from AAA, Construction Industry Rules and Mediation Procedures (May 1, 2022), R-22 and 9 U.S.C. § 5.

[40] Adapted from Thomas H. Oehmke and Joan M. Brovins, Commercial Arbitration (July 2022 update), Section 72:8, Thomson Reuters.

[41] Adapted from International Institute for Conflict Prevention & Resolution, Inc., Administered Arbitration Rules (Mar. 1, 2019), Rule 7.11.

Applicant Details

First Name	**Alexander**
Last Name	**Raveane**
Citizenship Status	**U. S. Citizen**
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Address	**Address** **Street** **622 S Ashley St** **City** **Ann Arbor** **State/Territory** **Michigan** **Zip** **48103** **Country** **United States**
Contact Phone Number	**2482280325**

Applicant Education

BA/BS From	**University of Michigan-Ann Arbor**
Date of BA/BS	**May 2019**
JD/LLB From	**The University of Michigan Law School** **http://www.law.umich.edu/currentstudents/careerservices**
Date of JD/LLB	**May 5, 2023**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Carozza, Regis
rcarozza@honigman.com
248-566-8568

Lombardi, Betsy
betsy.lombardi@lasmny.org
(315) 703-6657

Andres, Matthew
mattandr@umich.edu
734-763-9776

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Alexander Raveane
1006 E 6th St
Royal Oak, MI 48067
248-228-0325
araveane@umich.edu

February 7, 2023

The Honorable Irma Ramirez
U.S. District Court for the Northern District of Texas
1100 Commerce Street,
Dallas, Texas 75242

Dear Judge Ramirez:

I am a third-year student at the University of Michigan Law School and I am writing to apply for a clerkship in your chambers beginning in August 2023.

I have developed strong legal research and writing skills from my time representing clients at Michigan Law Veterans Legal Clinic. During the past year and a half at the clinic, I have written a number of legal documents, including a complaint, several court motions, part of an appellate brief, and an intensive research memo. I have undertaken research in support of all these projects in a wide variety of areas of law, including landlord-tenant disputes, statutory claims, contract disputes, and probate matters. From this work, I have gained the ability to quickly learn the basics of new areas of law, a skill that I could put to use in a clerkship. This experience, along with my past two summer internships, has taught me the fundamental importance of legal research and writing to the practice of law and convinced me that clerking would be an excellent opportunity for further training in this area.

I have attached my resume, law school transcript, and a writing sample for your review. Letters of recommendation from the following people are also attached:

- Professor Matthew Andres: mattandr@umich.edu, (734) 763-9776
- Professor Regis Carozza: carozzar@umich.edu, (734) 764-4705
- Betsy Lombardi: betsy.lombardi@lasmny.org, (315) 703-6657

Thank you for your time and consideration.

Respectfully,

Alexander Raveane

Alexander Raveane

1006 E. 6th St., Royal Oak, MI 48067 •
248-228-0325 • araveane@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL — Ann Arbor, MI
Juris Doctor — Expected May 2023
Honors: Dean's Scholarship recipient
Geneva Externship: Accepted into Michigan's Winter 2023 Geneva Externship to work for the UN Office of the High Commissioner for Human Rights, Rule of Law and Democracy Unit

UNIVERSITY OF MICHIGAN — Ann Arbor, MI
Bachelor of Arts with distinction, majoring in history with highest honors — Graduated May 2019
Thesis: Wrote original argument on U.S. mediation efforts in the Lebanese Civil War, earning an A+; researched and analyzed documents in the Gerald R. Ford Presidential Library to assess policymakers' grasp of the conflict
Honors: Arthur Fondiler Award for second-best undergraduate thesis, Regent's Scholarship
Rwanda Study Abroad: Interviewed genocide survivors, perpetrators, rescuers, and NGO workers

EXPERIENCE

VETERANS LEGAL CLINIC — Ann Arbor, MI
Student Attorney — August 2021-May 2022; August 2022-December 2022

- Drafted motions and complaints to support veterans in a wide variety civil cases including contract disputes, statutory claims, probate matters, and family disputes
- Built a class action lawsuit by investigating key facts and conducting research to form legal arguments
- Worked with a team to draft an appellate brief for a client in a child custody dispute
- Argued at motion hearings in court and negotiated with opposing counsel when appropriate
- Worked closely with clients and gave them legal advice (under the supervision of attorneys)

RIGHTS AND SECURITY INTERNATIONAL — London, UK
Intern — May 2022-August 2022

- Helped protect and amplify the voices of human rights defenders in countries where they are vulnerable
- Conducted legal research on the international legal standards for counterterrorism policies and applied this research to the Coalition's report on Colombia

LEGAL AID SOCIETY OF MID NEW YORK (LASMNY) — Syracuse, NY
Intern — May 2021-July 2021

- Researched groundbreaking legal issues for LASMNY's clients, such as whether it is illegal or unethical for an attorney to ask for payment in bitcoin
- Strategized on utilizing best available cases to fill in gray areas of the law for each legal question
- Wrote memos based on my findings for supervisors, either alone or with a team of interns
- Worked in many areas of the law, including Social Security disability cases, family law, and contract law

PUBLIC CITIZEN — Washington, DC
Intern — May 2019-August 2019

- Conducted research with a team for Robert Weissman, president, Public Citizen, to help formulate policy positions for dissemination to key members of Congress and major media outlets
- Researched undisclosed paid endorsements by Amazon, resulting in coverage by Bloomberg, CBS and Business Insider, and wrote reports to help Robert Weissman formulate his congressional testimony

ADDITIONAL

Languages: Intermediate in Italian, beginner in Arabic
Interests: Traveling, carpentry, and running

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Raveane,Alexander H
Student#: 63624901

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2020	**(August 31, 2020 To December 14, 2020)**							
LAW	530	005	Criminal Law	Barbara Mcquade	4.00	4.00	4.00	B
LAW	540	001	Introduction to Constitutional Law	Samuel Bagenstos	4.00	4.00	4.00	B+
LAW	580	002	Torts	Don Herzog	4.00	4.00	4.00	B
LAW	593	016	Legal Practice Skills I	Mark Osbeck he-him-his	2.00		2.00	S
LAW	598	016	Legal Pract:Writing & Analysis	Mark Osbeck he-him-his	1.00		1.00	S
Term Total				**GPA: 3.100**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.100**		**12.00**	**15.00**	
Winter 2021	**(January 19, 2021 To May 06, 2021)**							
LAW	510	001	Civil Procedure	Daniel Hurley	4.00	4.00	4.00	B
LAW	520	001	Contracts	Daniel Crane	4.00		4.00	P
LAW	594	016	Legal Practice Skills II	Mark Osbeck he-him-his	2.00		2.00	S
LAW	609	001	Employment Law	Jennifer Salvatore	3.00	3.00	3.00	B+
Term Total				**GPA: 3.128**	**13.00**	**7.00**	**13.00**	
Cumulative Total				**GPA: 3.110**		**19.00**	**28.00**	

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Control No: E194290601 Issue Date: 02/01/2023 Page 2

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Raveane,Alexander H
Student#: 63624901

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2021		**(August 30, 2021 To December 17, 2021)**						
LAW	457	001	Nuts /Bolts of Estate Planning	Regis Carozza	2.00	2.00	2.00	A-
LAW	793	001	Voting Rights / Election Law	Ellen Katz	4.00	4.00	4.00	A-
LAW	978	001	Veterans Legal Clinic	Matthew Andres	4.00	4.00	4.00	A
LAW	979	001	Veterans Legal Clinic Seminar	Carrie Floyd Matthew Andres Carrie Floyd	3.00	3.00	3.00	A-
Term Total				**GPA: 3.792**	**13.00**	**13.00**	**13.00**	
Cumulative Total				**GPA: 3.387**		**32.00**	**41.00**	
Winter 2022		**(January 12, 2022 To May 05, 2022)**						
LAW	630	001	International Law	Gregory Fox	3.00	3.00	3.00	A-
LAW	708	001	Local Government	Eli Savit	2.00	2.00	2.00	A-
LAW	744	001	International Human Rights Law	Karima Bennoune	3.00	3.00	3.00	A
LAW	843	001	Impact of 9/11 on Int'l Law	Karima Bennoune	2.00	2.00	2.00	B+
LAW	980	392	Advanced Clinical Law	Matthew Andres	3.00	3.00	3.00	A
Term Total				**GPA: 3.776**	**13.00**	**13.00**	**13.00**	
Cumulative Total				**GPA: 3.500**		**45.00**	**54.00**	

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Control No: E194290601 Issue Date: 02/01/2023 Page 3

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Raveane,Alexander H
Student#: 63624901

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2022	**(August 29, 2022 To December 16, 2022)**							
LAW	461	001	UN Human Rights Practicum	Karima Bennoune	2.00	2.00	2.00	A
LAW	664	002	European Union Law	Daniel Halberstam	3.00	3.00	3.00	B+
LAW	669	002	Evidence	David Moran	3.00	3.00	3.00	B+
LAW	681	001	First Amendment	Don Herzog	4.00		4.00	P
LAW	980	392	Advanced Clinical Law	Matthew Andres	3.00	3.00	3.00	A-
Term Total				**GPA: 3.536**	**15.00**	**11.00**	**15.00**	
Cumulative Total				**GPA: 3.507**		**56.00**	**69.00**	
Winter 2023	**(January 11, 2023 To May 04, 2023)**							
Elections as of:	02/01/2023							
LAW	947	601	Geneva Externship	Anna Nicol	12.00			
LAW	948	601	Geneva Externship Seminar	Anna Nicol	2.00			

End of Transcript
Total Number of Pages 3

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University of Michigan Law School
Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

F Fail.

H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.

P Pass when student has elected the limited grade option.*

PS Pass.

S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

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An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

THE UNIVERSITY OF MICHIGAN – ANN ARBOR

Unofficial Transcript - Not an Official Transcript

Raveane,Alexander
UM ID: 63624901 UIC: 0716700558
Uniqname: ARAVEANE

Citizen: U.S. Citizen

Raveane,Alexander +1.2482280325
425 E. Washington
Apt. 618
Ann Arbor, MI 48104
United States

Previous Names:
Raveane,Alexander H

University of Michigan Degrees Awarded

School/College:	Literature, Sci, and the Arts
Major:	Highest Honors in History
Minor:	Political Science
Degree:	Bachelor of Arts, With Distinction
Awarded:	02-May-2019

Fall 2015		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
Transfer Test Credit							
Advanced Placement							
BIOLOGY	100	Biol Nonsci	T	0.00	0.00	4.00	0.00
CHEM	125	Gen Chem Lab I	T	0.00	0.00	1.00	0.00
CHEM	126	Gen Chem Lab II	T	0.00	0.00	1.00	0.00
CHEM	130	G Chem&R Princ	T	0.00	0.00	3.00	0.00
HISTORY	101X	Departmental	T	0.00	0.00	4.00	0.00
Undergraduate L S & A							
Transfer Credit Accepted:					**0.00**	**13.00**	**0.00**

Fall 2015		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
GTBOOKS	191	Honrs Grt Bks Honors	A-	4.00	4.00	4.00	14.80
HONORS	135	Ideas in Honors Honors Political Economy Perspectives on Detroit	CR	1.00	0.00	1.00	0.00
ITALIAN	101	Elementary	A	4.00	4.00	4.00	16.00
POLSCI	140	Int Compar Pol HONORS	A	4.00	4.00	4.00	16.00
UC	280	Undergrad Research	A+	2.00	2.00	2.00	8.00
Term Total		**GPA: 3.914**		**15.00**	**14.00**	**15.00**	**54.80**
Cumulative Total		**GPA: 3.914**			**14.00**	**28.00**	**54.80**

Winter 2016		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
BIOLOGY	171	Intro Biology: EEB Honors	A	4.00	4.00	4.00	16.00
HONORS	232	Honors Core NS Honors	A	4.00	4.00	4.00	16.00
ITALIAN	102	Elementary	A-	4.00	4.00	4.00	14.80
UC	280	Undergrad Research	A+	3.00	3.00	3.00	12.00
Term Total		**GPA: 3.920**		**15.00**	**15.00**	**15.00**	**58.80**
Cumulative Total		**GPA: 3.917**			**29.00**	**43.00**	**113.60**

Spring 2016		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
ITALIAN	230	Second Year Ital Ferrara Study Abroad	A-	8.00	8.00	8.00	29.60
Term Total		**GPA: 3.700**		**8.00**	**8.00**	**8.00**	**29.60**
Cumulative Total		**GPA: 3.870**			**37.00**	**51.00**	**143.20**

Fall 2016		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
GEOG	145	Int to Intnl Studies HONORS	A+	3.00	3.00	3.00	12.00
HISTORY	246	Africa to 1850	A	4.00	4.00	4.00	16.00
HONORS	230	Honors Core SS Honors	A	4.00	4.00	4.00	16.00
POLSCI	368	Modern Warfare	A-	4.00	4.00	4.00	14.80
Term Total		**GPA: 3.920**		**15.00**	**15.00**	**15.00**	**58.80**
Cumulative Total		**GPA: 3.884**			**52.00**	**66.00**	**202.00**

Winter 2017		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
ECON	101	Principle Econ I	A	4.00	4.00	4.00	16.00
EECS	183	Elem Prog Concepts	A	4.00	4.00	4.00	16.00
HISTORY	247	Modern Africa HONORS	A-	4.00	4.00	4.00	14.80
POLSCI	389	Topics The Roots of Radical Political Islam HONORS	A	4.00	4.00	4.00	16.00
Term Total		**GPA: 3.925**		**16.00**	**16.00**	**16.00**	**62.80**
Cumulative Total		**GPA: 3.894**			**68.00**	**82.00**	**264.80**

Fall 2017		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
HISTART	250	Ital Renaissance Art	B+	4.00	4.00	4.00	13.20
HISTORY	253	Rise & Fall Mid Ages	A-	4.00	4.00	4.00	14.80
HISTORY	332	Russ&Sov Un	A-	4.00	4.00	4.00	14.80
HISTORY	442	Medvl Near East	A-	3.00	3.00	3.00	11.10
Term Total		**GPA: 3.593**		**15.00**	**15.00**	**15.00**	**53.90**
Cumulative Total		**GPA: 3.839**			**83.00**	**97.00**	**318.70**

THE UNIVERSITY OF MICHIGAN – ANN ARBOR

Unofficial Transcript - Not an Official Transcript

Raveane,Alexander
UM ID: 63624901 UIC: 0716700558
Uniqname: ARAVEANE

Date: Oct 4, 2019

Winter 2018		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
BIOLOGY	172	Intro Biol - MCDB Honors	A	4.00	4.00	4.00	16.00
HISTORY	313	Rev France 1789-1900	A-	4.00	4.00	4.00	14.80
HISTORY	498	Jr Honors Colloquium Honors	A	4.00	4.00	4.00	16.00
STATS	250	Intr Stat&Data Anlys	B	4.00	4.00	4.00	12.00
Term Total		**GPA: 3.675**		**16.00**	**16.00**	**16.00**	**58.80**
Cumulative Total		**GPA: 3.813**			**99.00**	**113.00**	**377.50**

Spring 2018		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
STDABRD	436	Peac&CnflctStd RW UG Peace&Conflict StudiesSeminar	A	6.00	6.00	6.00	24.00
Term Total		**GPA: 4.000**		**6.00**	**6.00**	**6.00**	**24.00**
Cumulative Total		**GPA: 3.823**			**105.00**	**119.00**	**401.50**

Fall 2018		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
HISTORY	354	War & Revol in China	A	3.00	3.00	3.00	12.00
HISTORY	499	Sr Honors Colloquium Honors Upper Level Writing Requirement Satisfied	A+	3.00	3.00	3.00	12.00
ISLAM	241	Amer&MidEast Wars	A+	4.00	4.00	4.00	16.00
POLSCI	397	Nations&Nationalism	A-	4.00	4.00	4.00	14.80
Term Total		**GPA: 3.914**		**14.00**	**14.00**	**14.00**	**54.80**
Cumulative Total		**GPA: 3.834**			**119.00**	**133.00**	**456.30**

Winter 2019		Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
HISTORY	499	Sr Honors Colloquium Honors Writing a Thesis: Methods of Historical Research	A+	3.00	3.00	3.00	12.00
POLSCI	369	Intl Econ Rel	A-	4.00	4.00	4.00	14.80
Term Total		**GPA: 3.828**		**7.00**	**7.00**	**7.00**	**26.80**
Cumulative Total		**GPA: 3.834**			**126.00**	**140.00**	**483.10**

Academic Statistics for Undergraduate L S & A		MSH	CTP	MHP
Total to Date	**GPA: 3.834**	**126.00**	**140.00**	**483.10**

Program Action History: Lit, Sci, and the Arts UG Deg

06/05/2019 Completion of Program
History BA / Honors
06/05/2019 Completion of Program
Honors
06/05/2019 Completion of Program
Minor -Political Science BA
10/26/2018 Plan Change
History BA / Honors
10/26/2018 Plan Change
Honors
10/26/2018 Plan Change
Minor -Political Science BA
11/16/2017 Plan Change
History BA / Honors
11/16/2017 Plan Change
Honors
09/12/2017 Plan Change
History BA
09/12/2017 Plan Change
Honors
05/04/2015 Plan Change
LSA Undeclared
05/04/2015 Plan Change
Honors
03/30/2015 Plan Change
Honors
03/30/2015 Plan Change
Residential College
03/28/2015 Matriculation
Residential College

Honors, Non-Degree

12/23/2015 University Honors
04/28/2016 University Honors
12/22/2016 University Honors
03/19/2017 James B. Angell Scholar
04/27/2017 University Honors
12/21/2017 University Honors
03/18/2018 James B. Angell Scholar
04/26/2018 University Honors
12/20/2018 University Honors

THE UNIVERSITY OF MICHIGAN – ANN ARBOR
Unofficial Transcript - Not an Official Transcript

Raveane,Alexander
UM ID: 63624901 UIC: 0716700558
Uniqname: ARAVEANE

Academic Previous Experience

Roeper School	1051 Oakland Ave
Birmingham	MI 48009-5761 United States
High School Diploma	06/07/2015

End of Unofficial Transcript

University of Michigan Law School
625 S. State St.
Ann Arbor, MI 48109

Regis A. Carozza, Lecturer
carozzar@umich.edu

February 08, 2023

The Honorable Irma Ramirez
Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street, Room 1567
Dallas, TX 75242

Dear Judge Ramirez:

I am writing on behalf of Alexander Raveane in connection with his application for a judicial clerkship, and I do so from a rather unique perspective, in that Alexander has been a student of mine, in a variety of my classrooms and at different times, since he was a sixth grader.

I met Alexander in the fall of 2008, when he was a student in my sixth grade social studies class at the Roeper School in Birmingham, Michigan. Even at that age, Alexander stood out among his peers for his discipline and determination to succeed. I had the pleasure of seeing how much he had matured as a student and as a person when he enrolled in my constitutional law, business law, and ancient Roman history courses during his 11th and 12th grade years at the Roeper School. I remember his work ethic, his undaunted determination to succeed no matter what the challenge, and his constant, deliberate efforts to improve, regardless of how well he did on a particular exercise.

Little did I suspect that our paths would cross yet again in the fall of 2021, during Alexander's second year at the University of Michigan Law School, when he enrolled in my practice simulation estate planning class. I was absolutely thrilled to see his name on the course roster at the beginning of the semester. In the classroom, I certainly saw in Alexander the same brilliant, diligent thinker whom I had first met in my classroom 13 years previously. But to witness, first hand, how much more he had become, both as a scholar and as an individual, was something truly special. It was evident (albeit unsurprising) that Alexander had made effective use of his undergraduate years in developing and honing the sophisticated analytical and writing skills that would be required for him to excel in the practice of law. The estate planning class largely was focused on drafting complex dispositive provisions in wills and trust instruments; Alexander proved himself to be a deep thinker and an organized, clear writer. Having the opportunity to teach him again, to hear his insights and thoughtful questions, and to read his well-crafted written work, was a privilege.

In writing this letter, I certainly want to convey the important message that Alexander is a motivated and supremely talented individual, whose thinking, communicating, and writing skills undoubtedly will be an asset in any judge's courtroom and chambers. However, in my view, it is even more important that I stress that Alexander is a human being of the highest quality. He is the real deal: both a brilliant mind and a genuinely good, affable, and kind person. Anyone who has the opportunity to work closely with him will be the better for it.

It is with this experience that I am honored to recommend Alexander for a judicial clerkship.

Sincerely,

Regis A. Carozza

February 08, 2023

The Honorable Irma Ramirez
Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street, Room 1567
Dallas, TX 75242

Dear Judge Ramirez:

It is my pleasure to recommend Alexander Raveane for a clerkship with your office. Mr. Raveane volunteered remotely for the Legal Aid Society of Mid-New York, Inc. (LASMNY) during the summer of 2021. He was a full-time remote volunteer, completing thirty-five hours a week of volunteer work each week. While LASMNY utilizes the term volunteer, this would be considered an unpaid internship.

As this volunteer work was done remotely, it focused primarily on legal research and writing projects. Throughout the summer, Mr. Raveane worked independently, and with the other two summer volunteers, to complete research memos on a variety of topics. These topics included, but were not limited to: SSI/SSDI (disability) cases, family law cases involving domestic violence, elder law, evictions, and issues regarding professional responsibility. As an example, he researched whether an attorney in New York can have their fee paid in cryptocurrency through a settlement agreement.

Due to the variety and number of research projects that Mr. Raveane was assigned, he constantly utilized his legal research skills. His superb research skills allowed him to go above and beyond with the projects that were assigned to him. I was impressed with his research skills, and I know that his research skills would be an asset in a clerkship position.

Additionally, Mr. Raveane's writing skills are also excellent. He always asked questions to clarify what expectations were, and then exceeded those expectations on each project. Additionally, since he was the only full-time volunteer, he led the other two volunteers on joint research projects to ensure they were completed in a timely manner.

Once again, I would highly recommend Mr. Raveane for a clerkship due to his strong work ethic and excellent legal research and writing skills.

If you have any questions about this letter, please let me know.

Sincerely,

Elizabeth Lombardi, Esq.
Managing Attorney
Legal Aid Society of Mid-New York, Inc.
221 South Warren Street, Ste. 310
Syracuse, NY 13202
Phone: (315) 703-6657

January 23, 2023

Your Honor:

I am pleased to have the opportunity to endorse Alexander Raveane for a clerkship in your chambers. I had the pleasure of having Alexander as a student in the Veterans Legal Clinic (VLC) in the fall of 2021, and I was so impressed with Alexander that I invited him to continue in the clinic as an advanced student during both the Winter 2022 and Fall 2022 terms. Alexander has worked hard to hone his lawyering skills during his time in the VLC, and he has represented his clients admirably. I know he would be a devoted, high-performing clerk in your chambers.

Because of the intensive experience the VLC offers students and the extensive time Alexander has spent in the clinic, I have gotten to know Alexander and his work well. The VLC provides free direct representation to veterans in all types of civil legal matters. This requires students to be nimble and adjust quickly to new clients, unfamiliar law, and a variety of cases. VLC students act as the attorneys for their clients, conducting client interviews, researching the relevant legal issues, drafting pleadings and motions, and preparing for and conducting hearings. As the supervising attorney in the clinic, I meet with students to discuss strategic decisions, review all written documents, and attend all court appearances to ensure high quality representation and provide feedback on students' performance. I spend a lot of time with the students, but the students work quite independently, and they themselves manage and maintain the relationships with their clients, the opposing attorneys, and the courts.

Alexander has eagerly embraced the VLC and the learning experiences the clinic offers. Alexander admitted to being a bit intimidated by the litigation process and the prospect of arguing in court when he first started in the clinic, but he overcame that nervousness by making sure he was always prepared for any contingency he could imagine. That effort has paid off. Through his outstanding legal research, Alexander has developed smart, creative arguments that he has employed to bring a motion for summary judgment, to fight to maintain a default judgment against an opposing party who had not been participating in a case, to get an executor of an estate removed because she was mishandling estate property, and to build a potential class action lawsuit against a national housing company that has been inflating water bills.

Alexander's written motions have not just been thoroughly researched, but also well written and structured. And he has done an excellent job with the in-court arguments that had worried him at the beginning of his semester, finding just the right tone and level of detail to be persuasive, and adeptly improvising when necessary. Alexander is thorough in putting together a hearing

701 S. State Street
Ann Arbor MI 48109-3091 USA
MAIN: 734 763-2798 FAX: 734-764-0061

plan in advance of his hearings, but he also is ready to roll with the punches when the hearing inevitably goes differently than he anticipated. I feel confident giving Alexander our most complex cases in the clinic.

Alexander has been an important part of the VLC for the past three semesters. He has demonstrated a strong work ethic and an eagerness to do everything he can to serve his clients. He has handled demanding clients by being responsive and patient, and he has managed aggressive opposing attorneys by having a good grasp of the facts and law relevant to his cases and by always approaching opposing counsel confidently but respectfully. Alexander has worked well with me, the other clinical staff members, and multiple student partners, finding ways to be successful while accommodating distinct preferences and working styles.

Alexander takes great pride in his work and great care of his clients. He has excelled as a student attorney in the VLC, and I have every confidence that he will be a fantastic clerk and an excellent representative of your chambers. I wholeheartedly endorse Alexander's candidacy for your open clerkship, and I would be happy to answer any other questions you might have about Alexander and his superior qualifications. Please feel free to contact me anytime at (734) 763-9776 or by email at mattandr@umich.edu.

Sincerely,

Matthew N. Andres
Clinical Assistant Professor
Director, Veterans Legal Clinic

I wrote this portion of the following memo for my internship at the Legal Aid Society of Mid-New York in 2021. My supervisor gave me permission to use this as a writing sample. I redacted the name of the opposing attorney who wrote the retainer agreement in question.

MEMORANDUM ON [redacted] RETAINER AGREEMENT

TO: BETSY LOMBARDI
FROM: ALEXANDER RAVEANE
DATE: MAY 19, 2021

ISSUE

[redacted], a New York attorney, provides a retainer agreement to clients that allows her to charge various minimum fees, including one hour's rate for each court appearance, half an hour's rate for conferences, and 3/10's an hour's rate for phone calls and text messages. These rates apply even if the firm spends less time than this on any of these. Is this arrangement legal under New York law?

SHORT ANSWER

Title 22 Section 1200 of the New York Code of Rules and Regulations along with case law suggests that this practice would not be legal, but a judge would ultimately have a substantial amount of discretion in determining whether the fee was excessive under Rule 1.5(a), or whether it was unreasonable under Rule 1.5(d)(4).

DISCUSSION

No court in New York appears to have directly addressed the issue described above. However, the way in which 22 NYCRR 1200 has been applied to various other situations sheds light on how a court would be likely to rule on this question. 22 NYCRR §1200 contains several rules that seem to address the question of whether an attorney can charge an hour's fee for 15 minutes of work. Rule 1.5(a) prohibits attorneys from charging excessive fees, Rule 1.5(d)(4) prohibits both nonrefundable or unreasonable minimum fee clauses, and Rule 1.16(e) prohibits attorneys from keeping unearned fees. N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.0. The

following analysis makes clear that any argument challenging [redacted]'s retainer should focus on the first two of these rules and leave out the third.

I. Excessive Fees

The most promising area of §1200 that would apply here is Rule 1.5(a), which states that "a lawyer shall not make an agreement for, charge, or collect an excessive or illegal fee or expense. A fee is excessive when, after a review of the facts, a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive. The factors to be considered in determining whether a fee is excessive may include the following: (1) the time and labor required… (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained…" Id. There have only been several cases that have addressed this standard, but these decisions help to clarify it. In *Matter of Doria*, a New York court determined that a fee charged by an attorney in relation to work on a post-judgment matrimonial motion was excessive because it was unreasonable compared to the actual amount of work done. Matter of Doria, 2018 N.Y. App. Div. LEXIS 6014, at *35; 2018 WL 4355454, at *34 (N.Y.A.D. 2018). This seems directly applicable to a case against [redacted]. Assuming that the rate that [redacted] charges for an hour of work is standard in the practice, then charging an hour's rate is clearly unreasonable for 15 minutes of work.

However, when only considering this case, [redacted] has two potential counterarguments. The first is she could try arguing that the matter of excessive fees is only applicable to flat fees and should not be applied to an hourly rate, given that the vast majority of the fees in these court cases are flat rates. However, there are cases such as *C.M. ex rel. P.M. v. Syosset Cent. School Dist.* that involve an hourly rate. The court here ruled that the hourly rate is "bewildering" and

excessive given that the attorney did not actually do much substantive work. C.M. v. Syosset Cent. Sch. Dist., 2013 U.S. Dist. LEXIS 157346, at *30; 2013 WL 5799908, at *10 (E.D.N.Y. 2013). While this case may at first glance seem distinguishable since the fees ended up being much greater than the actual settlement, it is not because the court states that this fact only "strengthens this conclusion," implying it would have reached the same result regardless of whether the costs or the settlement was greater. 2013 U.S. Dist. LEXIS 157346, at *30; 2013 WL 5799908, at *10. This shows that excessive fees do not only apply to cases of flat fees (the vast majority of cases) but also to unreasonable hourly rates.

The second argument that [redacted] could try making is that the fee was not excessive because it was spelled out in the contract and thus was not a surprise. Additionally, if this particular client was not actually charged an hour's fee for 15 minutes of work, she could try to use this to escape sanction. However, both of these related arguments should fail because case law implies that they are not relevant. In *Matter of Norton*, the court rules that an attorney's billings were excessive in part due to the fact that the services were not comparable to the amount payed. However, the court found that even absent this, the fees were simply "presumptively excessive." Matter of Norton, 2018 N.Y. App. Div. LEXIS 5252, at *7; 2018 WL 3448848, at *3 (N.Y. App. Div. 2018). This demonstrates that a fee can simply be held to be excessive on its face, without regard to factors such as the value of the work actually performed or whether it was clearly spelled out ahead of time, and thus could defeat [redacted]'s counterargument.

II. Minimum Fees

A minimum fee forecasts "the minimum amount that a client can expect to pay in order for the attorney to represent the client to completion in the contemplated matter." Cole-Hoover v. N.Y. Dep't of Corr. Servs., 2014 U.S. Dist. LEXIS 53812, at *3; 2014 WL 1516482, at *1 (W.D.N.Y. 2014). Under this definition, the clause in question in this retainer would be a minimum fee because it requires the client to pay for an hour of time for every court appearance, even if the actual time spent is less. Rule 1.5(d)(4) states that "A lawyer shall not enter into an arrangement for, charge or collect: (4) a nonrefundable retainer fee; provided that a lawyer may enter into a retainer agreement with a client containing a reasonable minimum fee clause if it defines in plain language and sets forth the circumstances under which such fee may be incurred and how it will be calculated." N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.0. *Matter of Cooperman* defines a nonrefundable retainer as payment of a fee for specific services in advance and irrespective of whether any professional services are actually rendered. Matter of Cooperman, 1994 N.Y. LEXIS 4629, at *9; 1994 WL 84413, at *469 (N.Y. 1994).

[redacted]'s contract would not constitute a nonrefundable retainer under this definition, because it states that the client has a right to terminate the agreement early and receive the unearned balance of the retainer agreement. However, even though this retainer is not per se invalid (since it is refundable), Rule 1.5(d)(4) still states that the minimum fee still must be reasonable and must be written in plain language. Unfortunately, there have not been very many cases explaining what reasonable means in this circumstance. However, the one case to address this directly implies that reasonability should be determined by the time the attorney in question actually spent on this matter. Timofeyev v Palant & Shapiro, 2010 N.Y. Misc. LEXIS 5801, at *9; 2010 WL 4904685, at *557 (N.Y.City Civ.Ct. 2010). Based on this standard, the reasonability of a

minimum fee agreement would be similar to the analysis of excessive fees above, and thus there would likely be a strong case against [redacted]

III. Unearned Payments

While the idea of attorneys being prohibited from keeping unearned payments may at first glance seem applicable to [redacted]'s conduct, further investigations shows that this is not an argument worth pursuing. New York has had long established precedent of barring attorneys from keeping unearned fees, but there has not been case law addressing this specific issue of charging each client for a full hour when dividing time between multiple clients. Many of the higher level cases, such as *Matter of Cooperman*, were based on the old Code of Professional Responsibility, which has since been repealed. Current cases that reference unearned fees base their authority on Rule 1.16(e) of the Rules of Professional Conduct. Rule 1.16(e) requires attorneys to return any unearned payments after the termination of representation. Id. While this idea of returning unearned payments would seem on its face to prohibit attorneys like [redacted] from charging the rate of an hour for 15 minutes of work, it is not clear that it would have this effect in practice. Most cases where courts have mandated the return of unearned payments have been in the circumstance of early termination of representation. See Matter of Tarter, 2017 N.Y. App. Div. LEXIS 8541; 2017 WL 6001619 (N.Y.A.D. 2017) (Attorney charged with violation Rule1.16(e) after plaintiffs withdrew from frivolous lawsuit that attorney had convinced them to launch). Also see In re Barclay, 2016 N.Y. App. Div. LEXIS 3907; 2016 WL 2994260 (N.Y. App. Div. 2016) (Attorney charged with violation Rule1.16(e) after plaintiff withdrew from representation following attorney's neglect of immigration matters).

CONCLUSION

In all, 22 NYCRR §1200 and the relevant case law demonstrates that there is a strong argument that charging a one-hour rate for 15 minutes of work is not consistent with the law of New York. This argument can be made either by using the excessive fees portion or the reasonable minimum fees part of Rule 1.5. Under the excessive fees analysis, the work here seems excessive compared to the amount charged. Case law makes clear that hourly fees can be excessive and fees in an agreement can be presumptively excessive without regard to what actually happened with any particular client. Similarly, under the minimum fees analysis, it can be argued that this retainer is unreasonable. However, the idea of unearned payments in Rule 1.16 should not be applied here, even though older case law may misleadingly suggest that it is relevant.

Applicant Details

First Name	**Samuel**
Middle Initial	**P.**
Last Name	**Ring**
Citizenship Status	**U. S. Citizen**
Email Address	**ring.samuel@outlook.com**
Address	**Address** Street **1510 Ann Arbor Drive** City **Norman** State/Territory **Oklahoma** Zip **73069** Country **United States**
Contact Phone Number	**8158149115**

Applicant Education

BA/BS From	**University of Wisconsin-LaCrosse**
Date of BA/BS	**May 2019**
JD/LLB From	**University of Oklahoma College of Law** **http://law.ou.edu**
Date of JD/LLB	**May 15, 2023**
Class Rank	**50%**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Jessup International Moot Court Competition - Semi-Finals** **1L Moot Court Competition - Final Four, Distinguished Speaker**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Barnes, Brenda
bbarnes1@ou.edu
Mortazavi, Melissa
melissa.mortazavi@ou.edu
Pearl, Alexander
alex.pearl@ou.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

SAMUEL RING

815-814-9115 • RING.SAMUEL@OU.EDU

Before my time at law school, I did not know what being a lawyer entailed. The answer could not be clearer to me now: to change lives through advocacy.

I have been lucky enough to be exposed to hardships that others my age are not familiar with. With these hardships come unique experiences that gives me emotional intelligence and grit that reaches beyond the law. Being different has taught me that empathy and hard work create an environment where you can truly connect to others and grow.

Being adopted since birth, I learned what it feels like to feel like an outsider in my own family. At age two, I was diagnosed with Acute Lymphoblastic Leukemia, beating cancer when I was seven years old. The battle did not end here, with lingering medical issues and a near death experience at 16. I further differed from my peers as I was homeschooled through my youth and suffered from medically diagnosed severe obsessive-compulsive disorder that made daily activities impossible. Teaching myself how to socialize with others while feeling completely different has led me to be observant and become adaptable to any situation.

With these experiences in mind, I tackled the legal field. During my time at OU Law, I have exposed myself to as many opportunities as I can including civil, criminal, and international law. Working in the Civil and Criminal Division of the OU Legal Clinic, I have not only created numerous pleadings from Requests for Production to Decrees for Dissolution, but I have argued for my clients in the court room as a licensed legal intern. Working at Foshee & Yaffe Law Firm has exposed me to many sectors of the law, writing pleadings for Social Security, Workers' Compensation, Veteran Appeals, Personal Injury, and more. This have given me unique experience and has made me highly adaptable to learning new types of law.

Further, the international stage became a passion of mine, becoming a semi-finalist while competing in the Jessup International Moot Court Competition. Coming into law school, I had no public speaking experience. I made it to the final four teams out of 87 during the 1L moot court competition and was named a Distinguished Speaker. I am also conducting international research in the Humanitarian Rights Clinic and have recently become an advisor for the United Nations, Committee on the Elimination of Racial Discrimination.

Most recently, I have been an intricate part of Resolution Legal Group, drafting contracts for real estate purchases and sales, creating indemnity and liability waivers, researching trademark and patent law, and settling creditor/debtor disputes. I have also been recruited to be a trial assistant for two cases involving five prison deaths, conducting research on a contract basis. Finally, I am working with the 10th Circuit Court of Appeals in analyzing cases adjudicated in the last year and will give a presentation in December.

By choosing to hire me, you are not choosing a number in a law school program. You are choosing a well-rounded person, who takes as much pride in personal growth as an outstanding career. Because without one, you cannot have the other. Thank you for your time, I look forward to hearing from you.

Samuel Ring
Licensed Legal Intern

SAMUEL RING

815-814-9115 • RING.SAMUEL@OU.EDU

EDUCATION

University of Oklahoma College of Law — **Norman, OK**
Juris Doctor Candidate — May 2023
Honors & Awards: OU Law Merit Scholarship
Dean's List (4 semesters)
Moot Court: Jessup International Law Moot Court, *Semi-Finalist*
1L Moot Court Competition, *Final Four*
1L Moot Court Competition, *Distinguished Speaker*
Activities: Board of Advocates, *Judging Assistant*
Latin American Law Student Association, *Pre-Law Chair*
International Human Rights Clinic, *Researcher*
United Nations Committee on the Elimination of Racial Discrimination, *Advisor*

University of Wisconsin La Crosse — **La Crosse, WI**
Bachelor of Arts in Political Science and Public Administration — May 2019
Minor: Legal Studies
Honors & Awards: Non-Resident Multicultural Scholarship
Joseph P. Heim Scholarship
Dean's List (5 semesters)

PROFESSIONAL EXPERIENCE

Pettigrew, Lewis, & Phillips, P.C. — **Oklahoma City, OK**
Licensed Legal Intern — January 2023–*Current*
- Appear on behalf of clients in Friendly Suits and Smalls Claims Court
- Conduct research, craft pleadings, and lead litigation (depositions, mediations, etc.).

J. Ralph Moore, P.C. — **Oklahoma City, OK**
Research & Trial Assistant — *October 2022–Current*
- Conduct trail preparation specifically for two prison murder cases.
- Lead research, conduct discovery, craft pleadings, and mentor younger law students assisting.

10th Circuit Court of Appeals — **Oklahoma City, OK**
Judicial Intern — *August 2022-Current*
- Research and summarize cases from the calendar year adjudicated by the tenth circuit including bankruptcy, civil procedure, civil rights, criminal law, commercial law, employment law, habeus corpus, Indian law, and torts.
- Brainstorm and present research with judges, lawyers, and supervisors.

Legal Resolution Group — **Oklahoma City, OK**
Licensed Legal Intern — *August 2022– December 2022*
- Craft memorandums, pleadings, and assist in preparing for trial.
- Assist in litigation including mediation, depositions, and hearings.

OU Legal Clinic — **Norman, OK**
Licensed Legal Intern — *January 2022 – December 2022*
- Oversee thirteen cases in both civil and criminal divisions.
- Manage all aspects of caseload, including drafting pleadings, maintaining correspondence, and attending court hearings on behalf of client.

Foshee & Yaffe Law Office — **Oklahoma City, OK**
Licensed Legal Intern — *April 2022 – August 2022*
- Assist with cases involving issues in social security, worker's compensation, personal injury, veteran's rights and criminal law.
- Draft appellate briefs, discovery requests, petitions and various other pleadings.

Schiro Criminal Defense — **Milwaukee, WI**
Legal Intern — *May 2021 – August 2021*
- Crafted trial motions and memorandums regarding case-specific issues.
- Assisted supervising attorneys with various stages of trial, including *voir dire*, witness testimony and impeachment,

SAMUEL RING

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and various hearings.

The Honorable David Feiss, Milwaukee County Circuit Court **Milwaukee, WI**
Judicial Clerk *May 2021 – August 2021*

- Researched issues in third party liability, consent, and property, and prepared memoranda summarizing findings for Judge Feiss.
- Gained a thorough understanding of the various stages of trial.

The University of Oklahoma College of Law

300 West Timberdell Road
Norman, OK 73019
(405) 325 - 4699
http://www.law.ou.edu

Grade Points

A+	12
A	11
A-	10
B+	9
B	8
B-	7
C+	6
C	5
C-	4
D+	3
D	2
D-	1
F	0

THE UNIVERSITY OF OKLAHOMA COLLEGE OF LAW UNOFFICIAL TRANSCRIPT

Ring, Samuel Paul

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Course	Dept	No.	Hours	Grade
Fall 2020				
Legal Foundations	LAW	6100	1	S
Civil Procedure I	LAW	5103	3	B-
Research/Writing & Analysis I	LAW	5123	3	B-
Torts	LAW	5144	4	B+
Property	LAW	5234	4	B+
GPH: 14	GPS: 114	HA: 15	HE: 15	GPA: 8.143
Spring 2021				
Intro to Brief Writing	LAW	5201	1	A-
Civil Procedure II	LAW	5203	3	B-
Criminal Law	LAW	5223	3	B
Oral Advocacy	LAW	5301	1	B+
Contracts	LAW	5114	4	B-
Constitutional Law	LAW	5134	4	B
GPH: 16	GPS: 124	HA: 16	HE: 16	GPA: 7.750
Fall 2021				
Litigation Skills	LAW	6400	3	A
International Law Foundations	LAW	6060	3	B
Evidence	LAW	5314	4	B
Crim Pro: Investigation	LAW	5303	3	B
GPH: 13	GPS: 113	HA: 13	HE: 13	GPA: 8.692
Spring 2022				
Interview/Counsel/Negotiation	LAW	6360	3	A-
Professional Responsibility	LAW	5323	3	B
Statutory Interpretation	LAW	6100	3	B+
Criminal Defense Clinic	LAW	6323	3	B+
GPH: 12	GPS: 108	HA: 12	HE: 12	GPA: 9.000
Summer 2022				
Civil Clinic	LAW	6363	3	A
Secured Transactions	LAW	6100	3	B
GPH: 6	GPS: 57	HA: 6	HE: 6	GPA: 9.500
Fall 2022				
The First Amendment	LAW	5450	3	
Crim Pro: Adjudication	LAW	5830	3	
Tribal Courts Seminar	LAW	6700	2	

Int'l Human Rights Clinic	LAW	6400	3	
Bankruptcy	LAW	5410	3	
Criminal Defense Clinic	LAW	6323	3	
GPH:	GPS:	HA:	HE:	GPA:

	GPH	**GPS**	**HA**	**HE**	**GPA**
OU CUM:	61	516	62	62	8.459

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1725 STATE STREET
LA CROSSE, WI 54601

TELEPHONE: 608-785-8576

Official Academic Transcript of:
SAMUEL RING
Transcript Created: 3-Feb-2021

Requested by:
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1616 MORAINE DRIVE
WOODSTOCK, IL 60098-9059

E-Mail: teamring5@gmail.com

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University of Wisconsin - La Crosse

Official Undergraduate Transcript

Name: **Samuel Paul Ring**
Student ID: **200112130**

Print Date: 02/03/2021

Campus ID: 950085242
SSN: #####3491
Birthdate: 10/14/####

Beginning of Undergraduate Record

Fall 2014 (9/2/2014 - 12/29/2014)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
MTH	145	Elem Statistics	4.000	4.000	C	8.000
POL	101	Amer Natl Govern	3.000	3.000	B	9.000
POL	234	Comp Political Sys	3.000	3.000	AB	10.500
POL	251	Justice, Power, and Politics	3.000	3.000	BC	7.500
THA	110	Theatre Apprec	2.000	2.000	A	8.000

		Att	Ern	GPA Att	Pts
Term GPA	2.860	15.000	15.000	15.000	43.000
Cum GPA	2.860	15.000	15.000	15.000	43.000

Good Standing

Spr 2015 (1/26/2015 - 5/15/2015)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
ANT	102	Intro Physical Ant	4.000	4.000	A	16.000
ENG	110	College Writing I	3.000	3.000	AB	10.500
GER	102	Elem German II	4.000	4.000	B	12.000
HIS	102	Global Trans & Chg Material Culture	3.000	3.000	B	9.000
POL	202	Contem Globl Issue	3.000	3.000	AB	10.500

		Att	Ern	GPA Att	Pts
Term GPA	3.410	17.000	17.000	17.000	58.000
Cum GPA	3.150	32.000	32.000	32.000	101.000

Good Standing

Fall 2015 (9/8/2015 - 12/22/2015)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
EFN	205	Understand Human Diffs (ES)	3.000	3.000	BC	7.500
ENG	200	Lit & Human Experience Adaptions:New Audience & Media	3.000	3.000	AB	10.500
ESS	104	Dance Appreciation	2.000	2.000	AB	7.000
HPR	105	Hlthy Actv Lifstyl	3.000	3.000	B	9.000
LS	200	Career Exploration & Planning	1.000	1.000	A	4.000
POL	338	European Government & Politics	3.000	3.000	AB	10.500

		Att	Ern	GPA Att	Pts
Term GPA	3.230	15.000	15.000	15.000	48.500
Cum GPA	3.180	47.000	47.000	47.000	149.500

Good Standing

Spr 2016 (1/25/2016 - 5/13/2016)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
FIN	207	Personal Finance	3.000	3.000	B	9.000
HIS	300	Topics in History Writing Emphasis EMP: Writing & Research	1.000	1.000	AB	3.500
POL	102	State/Local Govnmt	3.000	3.000	AB	10.500
POL	261	Political Inquiry and Analysis	3.000	3.000	A	12.000
POL	353	Mod & Contem Political Theory	3.000	3.000	B	9.000
PUB	210	Intro Public Admin	3.000	3.000	A	12.000

		Att	Ern	GPA Att	Pts
Term GPA	3.500	16.000	16.000	16.000	56.000
Cum GPA	3.260	63.000	63.000	63.000	205.500

Good Standing
Dean's List

Sum 2016 (5/23/2016 - 8/17/2016)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
ESC	211	Global Warming	0.000	0.000	W	0.000
PSY	100	General Psychology	3.000	3.000	AB	10.500

		Att	Ern	GPA Att	Pts
Term GPA	3.500	3.000	3.000	3.000	10.500
Cum GPA	3.270	66.000	66.000	66.000	216.000

Good Standing

Fall 2016 (9/6/2016 - 12/29/2016)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
POL	307	Pol Lang & Commctn	3.000	3.000	AB	10.500
POL	309	Identity Politics	3.000	3.000	A	12.000
POL	361	Research Method Politics & Gov Writing Emphasis	3.000	3.000	A	12.000
PSY	241	Social Psychology	3.000	3.000	BC	7.500

		Att	Ern	GPA Att	Pts
Term GPA	3.500	12.000	12.000	12.000	42.000
Cum GPA	3.300	78.000	78.000	78.000	258.000

Good Standing
Dean's List

SAMUEL RING
1616 MORAINE DRIVE
WOODSTOCK, IL 600989059

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JANIS A. VON RUDEN, REGISTRAR
University of Wisconsin-La Crosse

University of Wisconsin - La Crosse

Official Undergraduate Transcript

Name: **Samuel Paul Ring**
Student ID: **200112130**

Spr 2017 (1/23/2017 - 5/19/2017)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
POL	306	Judicial Process	3.000	3.000	AB	10.500
POL	373	Con Law IV: Rights of Accused	3.000	3.000	AB	10.500
PUB	332	Urban Policy	3.000	3.000	AB	10.500
PUB	346	Ethics Mgmt in Government	3.000	3.000	AB	10.500

		Att	Ern	GPA Att	Pts
Term GPA	3.500	12.000	12.000	12.000	42.000
Cum GPA	3.330	90.000	90.000	90.000	300.000

Good Standing
Dean's List

Fall 2017 (9/5/2017 - 12/28/2017)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
POL	355	Political Ideologies	3.000	3.000	AB	10.500
PUB	334	Health Policy	3.000	3.000	AB	10.500
PUB	450	Internship in Public Admin	5.000	5.000	A	20.000
PUB	453	Nonprofit Organizations	3.000	3.000	A	12.000

		Att	Ern	GPA Att	Pts
Term GPA	3.780	14.000	14.000	14.000	53.000
Cum GPA	3.390	104.000	104.000	104.000	353.000

Good Standing
Dean's List

Spr 2018 (1/22/2018 - 5/18/2018)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
CST	110	Communicating Effectively	3.000	3.000	B	9.000
PHL	101	Introduction to Logic	3.000	3.000	AB	10.500
POL	376	Con Law VII: Admin Law	3.000	3.000	A	12.000
PUB	450	Internship in Public Admin	3.000	3.000	A	12.000

		Att	Ern	GPA Att	Pts
Term GPA	3.620	12.000	12.000	12.000	43.500
Cum GPA	3.410	116.000	116.000	116.000	396.500

Good Standing
Dean's List

Fall 2018 (9/4/2018 - 12/27/2018)

Program: College of Liberal Studies

Course		Description	Att	Ern	Grd	Pts
POL	221	The American Legal System	3.000	3.000	A	12.000
POL	377	Con Law VIII: 1787 Orig Intent	3.000	3.000	A	12.000
POL	494	Capstone Seminar	3.000	3.000	A	12.000
PUB	320	Public Budgeting and Finance	3.000	3.000	B	9.000

		Att	Ern	GPA Att	Pts
Term GPA	3.750	12.000	12.000	12.000	45.000
Cum GPA	3.440	128.000	128.000	128.000	441.500

Good Standing
Dean's List

Spr 2019 (1/28/2019 - 5/24/2019)

Program: College of Liberal Studies
Plan: Political Science Major
Plan: Public Administration Major
Plan: Legal Studies Minor
Plan: CLS BA Degree Prog Opt-Hum

Course		Description	Att	Ern	Grd	Pts
ECO	110	Microeconomics & Public Policy	3.000	3.000	AB	10.500
ENG	307	Writing for Mgt, PR & the Pros Writing Emphasis	3.000	3.000	B	9.000
PHL	100	Introduction to Philosophy	3.000	3.000	A	12.000
PUB	330	Public Policy	3.000	3.000	B	9.000

		Att	Ern	GPA Att	Pts
Term GPA	3.370	12.000	12.000	12.000	40.500
Cum GPA	3.440	140.000	140.000	140.000	482.000

Good Standing

Undergraduate Career Totals

		Att	Ern	GPA Att	Pts
Cum GPA	3.440	140.000	140.000	140.000	482.000
Trans Cum GPA		0.000	0.000	0.000	0.000
Comb Cum GPA	3.440	140.000	140.000	140.000	482.000

Degrees Awarded

Degree: Bachelor of Arts
Confer Date: 05/12/2019
Degree GPA: 3.440
Program: College of Liberal Studies
Plan: Political Science Major
Plan: Public Administration Major
Plan: Legal Studies Minor

End of Official Undergraduate Transcript

SAMUEL RING
1616 MORAINE DRIVE
WOODSTOCK, IL 600989059

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JANIS A. VON RUDEN, REGISTRAR
University of Wisconsin-La Crosse

UNIVERSITY OF WISCONSIN-LA CROSSE

TRANSCRIPT GUIDE

UNIVERSITY GRADING SYSTEM
A 4.00 grading system (A = 4.00) is used at the University of Wisconsin-La Crosse. All credits are based on semester hours. Definitions of grades are listed below.
(Grades below count in credits attempted)

Grades		Grade Points
A	highest grade	4.00
*A/B		3.50
B	above average	3.00
B/C		2.50
C	average	2.00
D	below average	1.00
F	failure	0.00
WF	withdraw failing	0.00

* Effective January 1994
(Grades below not counted in credits attempted)

Grades	
I	incomplete
W,WP	withdraw passing
EN	enrolled (no grade required)
EP	emergency withdrawal/passing
EF	emergency withdrawal/failing
AS	audit satisfactory
AU	audit unsatisfactory
P	pass
PR	in progress (graduate thesis or final project)
NR	not recorded
S	satisfactory
U	unsatisfactory
IP	in progress

Transfer credits are denoted by a “T” preceding the grade.

COURSE REPEAT POLICY
A course in which a student has previously earned a “D” or “F” may be repeated. The most recently earned grade will supersede the previously recorded grade. All grades remain on the academic record; however, only the most recent grade is calculated in the cumulative grade point average.

CALENDAR
The University of Wisconsin-La Crosse operates on a semester system. Courses are regularly offered during four terms: Summer Session (May through early August), Semester I (September through mid-December), Winter Intersession (three- week January intersession), Semester II (January through May).

ACCREDITATION
The University of Wisconsin-La Crosse is accredited by the Higher Learning Commission. The full list is available at http://catalog.uwlax.edu/undergraduate/aboutuwlax/accreditation/

PREVIOUS NAMES
The University of Wisconsin-La Crosse is a comprehensive public institution offering associate, baccalaureate, master's and doctoral degrees. It has been known previously as Wisconsin State University-La Crosse (1964-1971), Wisconsin State College at La Crosse (1951-1964), La Crosse State Teachers College (1927-1951), and La Crosse Normal School (1909-1927).

COURSE NUMBERING SYSTEM

000-099	Non-degree credit courses
100-299	Introductory level undergraduate courses primarily for freshmen and sophomores
300-499	Courses at this level are intermediate to advanced and primarily for juniors and seniors
500-699	Most courses at this level are open to upper division undergraduates (juniors and seniors) and graduate students. Selected courses are graduate level only
700-999	Open to graduate students only (exemptions may be granted)

ESL courses numbered below 250 are transcript credit only and do not count toward a degree.

ETHNIC STUDIES
Beginning in summer 2009, Ethnic Studies courses will be denoted by (ES) in the course title.

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University of Wisconsin-La Crosse
1725 State Street
La Crosse, WI 54601 USA
608.785.8576
www.uwlax.edu/records

The UNIVERSITY *of* OKLAHOMA
Legal Clinic

December 1, 2022

RE: Samuel Ring

To Whom It May Concern:

I am happy to recommend Samuel Ring for employment. I have known Sam since January 2022 and have worked closely with him in the OU Legal Clinic since June 2022. As Sam's supervising attorney, I have been afforded the opportunity to observe him in many different professional settings, and to assess his work and his abilities. Sam has impressed me as a very bright, self-directed student.

As a student Licensed Legal Intern in the criminal clinic, Sam represents low-income clients in misdemeanor and felony cases in state court. Although the subject matter has been somewhat limited, it has given Sam the opportunity to take primary responsibility for all aspects of his criminal cases, including intake interviews, legal research, pleading drafting, negotiating with the prosecution, counseling clients, and appearing in court with his clients. While the cases which Sam has handled present loss of liberty and high emotions, Sam presents an aura of calm authority. This inspires confidence and trust in his clients. Sam identifies what he needs to accomplish and then goes about it in an efficient, methodical manner. Sam is always open to expanding his practical experience.

Although passion is a word which is overused these days, my observations of Sam regarding his work representing those who are most often without a voice, that is the word which best describes how he approaches his responsibilities. He truly cares about his clients and that shows in the attention he gives to each of his cases. Beyond that, he gets how each person's access to the courts and the system of justice affects everyone's access to justice.

Sam has become a natural leader in the clinic, and often the other students seek him out as a resource apart from the faculty. He readily gives of his time and is well liked by all of our staff. For all these reasons, would make a great attorney. Please let me know if I can be of further assistance.

Respectfully,

Brenda H. Barnes

Brenda H. Barnes
Assistant Professor, Clinical Legal Education

300 West Timberdell Road, Norman, OK 73019
PHONE: (405) 325-3702 FAX: (405) 325-7758
EMAIL: legalclinic@ou.edu

The UNIVERSITY of OKLAHOMA
College of Law

January 30, 2023

The Honorable Irma Ramirez
Magistrate Judge
United States District Court for the Northern District of Texas
Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street, Room 1567
Dallas, TX 75242

Re: Recommendation for Samuel Ring

Dear Judge Ramirez,

I am writing in enthusiastic support of the candidacy of Mr. Samuel Ring. Mr. Ring is an outstanding student: a delightful combination of being intelligent, honest, a team player, and consistently prepared. I had the pleasure of teaching him in Torts as a 1L then later in my Professional Responsibility class. It has been a pleasure to watch his growth from a lay person to a soon to be lawyer. Moreover, he has done so in an exceedingly difficult environment. Our first class together was Torts during Covid in Fall 2020, where we worked in an extremely stressful environment of an all-masked, in-person, socially distanced classroom. Suffice it to say, if he can learn in that environment with such aplomb and enthusiasm, I am confident that Mr. Ring will consistently excel throughout his legal career. He is determined and resilient.

From the get-go, in Torts class, he was prepared, and his comments were on point. He would come to my office hours and pro-actively follow up on key concepts. He also consistently brought thoughtful questions to the class and interacted productively with classmates. This is all as the specter of Covid-19 hung over our heads in the pre-vaccine era. He is witty and wraps his head around challenging concepts.

I have not had an extensive opportunity to evaluate Mr. Ring's writing in detail; however, what I have seen on his exams was very good. The writing flow followed a natural progression through blackletter doctrine to factual analysis. He did an excellent job distinguishing adverse authority and weaving in thoughtful policy analysis where necessary. This was all under tight time limitations.

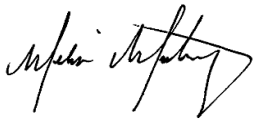
Another unique element that Mr. Ring offers, that I find increasingly rare, is his sense of professionalism. Although he would probe statements I made in class or comments by his peers, he did so with a tone of respect and poise. His questions showed a commitment to accuracy and attention to detail that is a credit to any legal position. He was organized and timely. Where there were issues in other classes, and he brought these to my attention in my capacity as Associate Dean, he did so with the utmost respect for his professors and with compassion and discretion.

Andrew M. Coats Hall, 300 Timberdell Road, Norman, Oklahoma 73019-5081, PHONE: (405) 325-4699
WEBSITE: LAW.OU.EDU

In our discussions after class and during office hours, I was also struck by how well Mr. Ring balanced multiple important commitments while still maintaining strong work product in the classroom. Finally, a much-appreciated bonus: Mr. Ring also brought a positive attitude and good humor to class.

It is without reservation that I recommend Mr. Ring. I have no doubt that you will find him to be insightful, diligent, and hardworking. If I can provide any additional information to you, I hope you will be in touch.

Sincerely,



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January 30th, 2023

The Honorable Irma Ramirez
Magistrate Judge
United States District Court for the Northern District of Texas
Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street, Room 1567
Dallas, TX 75242

Re: Recommendation Letter for Samuel Ring

Dear Judge Ramirez:

My name is Alex Pearl and I am an enrolled citizen of the Chickasaw Nation and a 2007 graduate of the University of California, Berkeley School of Law. Currently, I am a Professor of Law at the University of Oklahoma College of Law. It has been a pleasue to have Mr. Sam Ring as a first-year student in my Property course and then as a second-year student in my upper division Statutory Interpretation class. I write to enthusiastically recommend Mr. Ring for a place in your chambers.

At the University of Oklahoma, I teach Property, Water Law, and Statutory Interpretation and I have previously taught American Indian Law, Climate Change Law & Policy, and an Advanced Water Law seminar at my prior institutions. Mr. Ring was a good student in my Property class and received a B+. In my Property course, I require students to complete multiple choice quizzes as well as a written essay final exam. Mr. Ring's writing ability and intellectual grit was on clear display in each of the multiple-choice quizzes as well as the final exam. He found similar success in my course on Statutory Interpretation, where he also received a B+. Statutory Interpretation is, in my humble view, among the most important classes in the second and third years of law school and should be required. It is theoretical, philosophical, but also intensely practical.

I've had some opportunities to get to know Mr. Ring in office hours and found him to be professional, polite, and considerate. I think all of these traits are important for being a successful and well-adjusted person for a life in the law—and especially in chambers. Despite all of the challenges facing us throughout the pandemic, Mr. Ring has not only perservered, and maintained a good outlook. Mr. Ring will need some training, as all recent law school graduates do, but he takes direction well and incorporates constructive feedback into his approach. I have no hesitation to recommend him for a place in your chambers.

If you have any questions, please contact me at your convenience.

Sincerely,

M. Alexander Pearl

MEMORANDUM

To: Honorable Judge David Feiss
From: Samuel Ring
Re: [redacted]–Motion to Suppress Physical Evidence
Date: May 27, 2021

QUESTION PRESENTED

Does Wisconsin state law create a reasonable expectation of privacy against search and seizure when an individual has legally abandoned their property, but a third party gives consent for a search?

BRIEF ANSWER

Likely yes. For property to be considered legally abandoned an individual must voluntarily leave his property with no intent to reclaim it. Further, with regards to cell phones the courts are split on whether abandoned cell phones can be searched if they have password protection. Individuals have a reasonable expectation of privacy when it comes to their cell phones, but one way this right can be forfeited is if a third party has authority over the property and gives consent for a search. For this to be permissible, there must be perceived actual or common authority judged based on a reasonable person standard. If the third party does not possess authority, their consent is immaterial with regards to a search. Finally, the scope of consent must be reasonable and is limited to what will aid the state in their search relating to a specific charge and the scope they represent to an individual.

STATEMENT OF FACTS

On November 19, 2020, police were dispatched to the Hideaway Motel for criminal damage to property and a weapons complaint. Owner, [redacted] reported that an unknown black male threw a rock through a window and fled the scene. The police recovered a cell phone that was dropped by the suspect at the Motel. On the screen, "Lost iPhone . . . this phone has been lost . . . please call me . . . 414-488-4880," was displayed. Detective Beal contacted the number listed and a woman identified herself as [redacted]. She stated she had been robbed of her phone by a black male, 5'4", medium build, wearing all black clothing. She did not have proof of ownership of the cellphone but identified the passcode as 051601. She said she would come into the station and unlock it, but never showed or called.

Det. Beal called back and a woman named [redacted]" answered. She claimed she had given a false name earlier ([redacted]) because she was not sure Det. Beal was a real officer. Morgan came into the station and entered the passcode incorrectly. At this time, there was still no proof of ownership, but Det. Beal asked if he could search the phone and Morgan signed a standard "Consent to Search form" for the device.

The police department accessed the information on the cell phone and identified the owner as [redacted] The department searched the data, call logs, text messages, and location of the phone in pursuit of information about the robbery at the Motel. Det. Beal searched for [redacted] on Facebook and found that his

real name was [redacted]. Roy was seemingly in a romantic relationship with Morgan. Roy had a pending case and was being monitored by Justice Point and his number was listed–it was the same as the recovered cell phone. Roy was the owner of the cell phone. Because the police found evidence of illicit activity on the cell phone, Roy is attempting to suppress the evidence found on the cell phone.

DISCUSSION

WISCONSIN LAW WILL LIKELY FIND ROY HAS A REASONABLE EXPECTATION OF PRIVACY WITH REGARD TO HIS RECOVERED CELL PHONE AGAINST A SEARCH, EVEN WHEN CONSENTED TO BY A THIRD PARTY.

"[A]ccessing the contents of the password-protected cell phone without a warrant violate[s] the Fourth Amendment." (*K.C.*, 952) "Warrantless searches are 'per se" unreasonable and are subject to a few limited exceptions . . . One of those exceptions is valid third-party consent." (*Kieffer*, 541) "[The] third-party consent exception to the warrant requirement applies to cell phones." (*Gardner*, 784) "The United States Supreme Court has recognized that even if a third party lacks actual common authority to consent to a search . . . police may rely upon the third party's apparent common authority to do so, if that reliance is reasonable." (*Kieffer*, 556) "[U]nder one of the exceptions to the warrant requirement -- is not that [the State] always be correct, but that they always be reasonable." (*Rodriguez*, 187)

Although third parties may give consent if they have common authority, under the circumstances a reasonable person would conclude that Morgan did not have common authority of the cell phone because she had no proof of ownership, did

not know the passcode, gave a false name, and told a story of losing the phone that was unsubstantiated. Further, even though the cell phone was left at the scene of the crime (Hideaway Motel), there is nothing to indicate that Roy voluntarily left the cellphone at Hideaway, which would make it abandoned property and negate his right to privacy against search and seizure. Finally, even if Det. Beal properly secured third party consent to search the cell phone, Det. Beal exceeded the scope of the search by delving into almost every "crevice" of the cell phone, including but not limited to: text messages, data, and call logs.

A. A reasonable person would likely conclude Morgan did not possess common authority to authorize a search of Roy's cell phone.

"The United States Supreme Court has recognized that even if a third party lacks actual common authority to consent to a search . . . police may rely upon the third party's apparent common authority to do so, if that reliance is reasonable." (*Kieffer*, 556) "[O]fficers . . . must consider the surrounding circumstances." (*Kieffer*, 549) "[T]he consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared." (*Matlock*, 170) "[C]ommon authority 'rests' on mutual use of the property by persons generally having joint access or control for most purposes . . . ." The burden of establishing that common authority rests upon the State." (*Rodriguez*, 181)

In *Kieffer*, a man who was letting a young couple stay in his garage loft gave the police consent to search the premise the couple was staying in. The court

concluded that the homeowner could not give consent to search– he did not have actual authority, because he regarded the space as theirs. Further, he did not have apparent common authority, and the court concluded a substantial search is required and police would have come to this conclusion if they would have inquired deeper. (*Kieffer*, 533-40, 554)

Applying the inquiry requirement from *Kieffer*, after his inquiry, Det. Beal should and seemingly did understand that Morgan was not the owner of the cell phone based on the circumstances. The cornerstone of third-party consent rooted in common authority is reasonableness and to examine this, the facts of the case will be the determining factor. There are no set circumstances the court must take into consideration, but *United States v. Gardner* gives an illustration of what the court will look at to establish common authority with cell phone specifically. Here, the court established common authority because the woman who consented to the search used the phone throughout the day, she had only that phone in her possession that day, she knew the passcode, and she gave the phone to the officers. (*Gardner*, 784)

Looking at these factors, it is apparent that Morgan: (1) did not have the phone on her that day as Beal possessed it, (2) she did not know the passcode as she tried and failed, (3) she did not give the phone to the officer as he found it at the Hideaway Motel, and (4) she had an additional phone on which the officer called her that day. All of these factors clearly indicate that she was not the actual owner and that she did not have common authority over the device. Det. Beal might have

surmised that because it seemed Morgan was in a romantic relationship with Roy that she had common authority based on their close relationship, but the alleged conclusion could not have come to fruition until he had already proceeded to search the device.

Further, Det. Beal indicated that he asked for permission to search the phone from Morgan to determine who owned the cell phone. Unfortunately for him, cell phones are protected under the Fourth Amendment and have an expectation of privacy that can only be compromised by a search warrant founded on probable cause, exigent circumstances, or consent by an owner or third party with common authority. None of these are present in this case, therefore the search was a violation of Roy's Fourth Amendment rights.

Morgan likely did not have common authority over the cell phone and after a substantial inquiry Det. Beal should have come to that conclusion, using the reasonable person standard. Factors that are persuasive but not dispositive point towards Morgan giving a false story: (1) She had an additional phone, (2) she did not know the passcode, (3) she did not have the phone on her that day, and (4) she did not have the phone in question on her that day.

B. The abandonment doctrine likely does not apply to Roy's cellphone as he likely did not voluntarily abandon his phone.

"[P]olice may conduct a search without a warrant if consent is given or if the individual has abandoned his or her interest in the property in question." (*K.C.*, 955) "[A]bandoned property has no protection from either the search or seizure

provisions of the Fourth Amendment." (*K.C.*, 950) "[T]he test for abandonment is whether a defendant voluntarily discarded . . . the property in question so that he could no longer retain a reasonable expectation of privacy. . . ." (*K.C.*, 954)

Even though abandoned property cannot be searched, cell phones present a novel issue because they hold so much information and can be password protected. The courts are split on whether a warrantless search is permissible when it comes to abandoned cell phones. Some hold that passage of time shows abandonment and others claiming password protection bars any search regardless of time without a warrant. In *State v. K.C.*, two men left behind their cell phones and fled from their car when seeing the police. The police waited months before they searched the phone without a warrant, believing it to be abandoned. The court ruled, however, that the password protection on the phone protected their reasonable expectation of privacy and warrantless search was impermissible. (*K.C.*, 952)

Other jurisdictions believe that passage of time can negate an expectation of privacy. In *State v. Brown*, a cell phone was found in an apartment that had been broken into. The phone sat in the police department for six days and was subsequently opened. The court ruled that the defendant had given up his reasonable expectation of privacy because he clearly had abandoned the phone and when an individual abandons their property, they forfeit their reasonable right to privacy. (*Brown*, 17–18, 28)

This can be distinguished from the present case because there is nothing in the facts to indicate that Roy left his cell phone at the Hideaway Motel by his own

volition or if the cell phone merely fell from his pocket as he fled. If the ruling in *K.C.* is respected, then Roy has a reasonable expectation of privacy no matter how much time elapses because his phone is password protected. This protection bars a warrantless search. If the ruling in *Brown* is respected, then depending on the amount of time that elapses, Roy could lose his right to privacy even if the cell phone is password protected. This case can be distinguished from both cases because in the present case the cell phone was recovered on November 19, 2020, and it was searched on November 20, 2020–only one day later. Since no more than a day passed, it is likely that the court would look disfavorably on the cell phone being abandoned and his cell phone was password protected, thus, under either *K.C.* or *Brown*, Roy would have a reasonable right to privacy and State would need to acquire a warrant.

In conclusion, the state would likely not be permitted to search Roy's cell phone under either approach by the courts because he either has a reasonable right to privacy, even if abandoned, because of his password protection or not enough time has elapsed for a reasonable person to infer that he has abandoned his property. Further, it seems unlikely that Roy abandoned his cell phone because he posted a "lost cell phone" message and seemingly sent his girlfriend to claim it for him.

C. Detective Beal likely exceeded the scope of the search consented to by Morgan.

"The scope of consent is defined by gauging, under the totality of the circumstances, what a "typical reasonable person" would have understood it to be. . . [it is] generally defined by its expressed object." (*Lemmons*, 924) "[O]fficers [are] limited to searching in only those areas in which that evidence could reasonably have been expected to be found." (*Lemmons*, 924) "One of the most notable distinguishing features of modern cell phones is their immense storage capacity. (*K.C.*, 953) "Modern cell phones . . . hold for many Americans 'the privacies of life.'" (*K.C.*, 954) "Cell phones store information that we have previously held to be protected under article I, section 7 as private affairs." (*Samalia*, 271) "Most recently, we recognized that text messages are private affairs." (*Samalia*, 272)

In *United States v. Lemmons*, the defendant was told that the police were there to find evidence of him spying on his neighbor and he signed a general consent form–the police subsequently found evidence of child pornography. (*Lemmons*, 921–23) The State argued that by singing the consent form, Lemmons consented to a comprehensive search of his trailer and the court rejected this proposition. (*Lemmons*, 924) It ruled that consent to search is narrowly tailored to include only what will aid the police in finding what they are searching for. If the State does uncover evidence, however, while respecting the narrowly tailored search, the evidence is admissible. (*Lemmons*, 924)

Looking to the case at bar, even though it is arguable that a reasonable person would assume a "General Consent Form," signed by Morgan in this case, would permit a wholesale search of the cell phone as evidence could be found in any part of the cell phone, the court has determined that some distinct parts of cell phones have separate privacy interests–specifically information stored and text messages. The issue that arises with "General Consent Forms" is scope of consent. To allow the State to have untethered power to search every compartment and crevice of an item is overly broad. When searching a home or a car, it may be easier to determine scope of a search (i.e., specific room, glove compartment) but cell phones pose a novel issue.

As discussed in *K.C.*, modern cell phones are multi-faceted and often contain the intricacies of an individual's private life in ways that were not possible before. Because of this, a search a singular cell phone can disclose information about all aspects of a individual's life that are private and about others in their life. The need to define the scope of these searches is paramount to protecting the privacy interests if Americans.

Because of this, it is reasonable to conclude that Det. Beal was only permitted to search the contents of the phone to discover who possessed the phone if this was his true purpose. This could have been done by determining the number on the cellphone and inquiring as to has proof of ownership currently. Delving into test messages, call logs, and data seems improper because this exceeds the scope of the purpose of the search. Further, although Morgan may have been under the

impression that signing a General Consent Form leads to a comprehensive search, the courts have rebutted the contention that these forms imply wholesale searches. Further, cell phones present additional considerations with respect to privacy and can reveal more about an individual than almost anything else in their possession.

CONCLUSION

In conclusion, it is likely that Wisconsin state law creates a reasonable expectation of privacy that protects abandoned cell phones from searched by the state, even if consent is given by a third party. In the case at bar, three reasons preclude a search of Roy's recovered cell phone. First, the state does not have be correct in determining that an individual has common authority over property but must apply an objective reasonable person standard in determining whether an ordinary individual would believe that an individual had common authority over a piece of property. In this case, it is unreasonable for Det. Beal to determine Morgan had common authority over Roy's cell phone. Second, the abandonment doctrine likely does not apply, because it is unclear whether Roy left his phone on purpose or if he dropped it. The courts are split, but under either view it likely that his privacy right is protected. Third, regardless of whether the search was permitted, Det. Beal exceeded the scope of the search after Morgan signed a "General Consent Form" because of the modern privacy considerations cell phones resent. Therefore, Roy has a reasonable expectation of privacy against a search of his cell phone.

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs. Case No.: [redacted]

[redacted]

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO EXCLUDE STATE'S EXPERT TESTIMONY

FACTS

The Defendant, appearing specially by Schiro Criminal Defense, moves the Court pursuant to the authorities set forth below including Wis. Stats. § 907.02 and *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993) for: (1) a hearing where the state must describe its expert testimony in detail, (2) an Order excluding the state's expert witness, Nurse Practitioner Judy Walczak, from testifying at trial, or in the alternative (3) if the expert is allowed to testify, they must be examined in the form of hypothetical questions.

As indicated by the State's Notice and Summary of Expert Testimony filed with this Court, the state intends to introduce testimony offered by its witness, Nurse Walczak.

The summary provides:

> NP Walczak will testify about the medical records and injuries of the victim, her own personal observations, and *her diagnosis*. Further, NP Walczak will testify regarding her professional opinion about whether the findings are consistent with abuse. Additionally, she will testify about her professional opinion about the *child's capacity to understand* the dangerous consequences of the act, as well as his *ability to refuse or resist it*. All of these findings and opinions were present in the CAC report and the medical records that have been previously turned over to defense. (emphasis added).

The State's Notice provides Nurse Waczak will testify regarding her opinions contained in medical records provided to defense counsel. The medical records show the following opinions: (1) "[t]his was a reckless, intentional act", (2) the act "resulted in a burn that was painful and required medical attention," (3) "[p]hysical exam findings are definite/diagnostic for abuse," and (4) "[t]here was certainly the potential for a more serious burn if his clothes caught on fire." Such testimony must be excluded for several reasons.

First, expert witnesses are not permitted to provide conclusionary testimony. "The rule prohibiting experts from providing their legal opinions or conclusions is [] well established . . . [E]very circuit has explicitly held that experts may not invade the court's province by testifying on issues of law." *Castagna v.W. Mifflin Area Sch. Dist.*, Civil Action No. 2:18-cv-00894, 2020 U.S. Dist. LEXIS 218630, at *4 (W.D. Pa. Nov. 23, 2020)(citation omitted). Walczak is not permitted to state this act was a "reckless, intentional act" because she is not permitted to derive legal conclusions and no one may speak to the mindset of the defendant. Further, she is not permitted to claim "physical exam findings are definite/diagnostic for abuse." This is also a legal conclusion which she is not permitted to give and is partially based on medical qualifications she does not possess.

Second, the proposed testimony is not "based upon sufficient facts or data" and is not the "product of reliable principles or methods." "[T]estimony [must be] based upon sufficient facts or data [and] the product of reliable principles and methods." Wis Stats. § 907.02. Further, medical evaluations and diagnosis "must be examined with care and objectively tested" before they may be presented to a jury to win a conviction. State v. J.L.G., 234 N.J. 265, 291, 190 A.3d 442, 458 (2018). The medical report given to the defense does **not** indicate signs of physical

abuse. Because there are no signs of abuse on this report, Walczak's claims are not supported by facts or data, and do not rely on sound principles or methods.

Third, Walczak is not qualified as an expert. She is not a practicing physician and "[a] nurse cannot testify as a medical expert on the issue of a medical diagnosis because that matter is outside her medical expertise," *Duchene v. Finley*, 2015-Ohio-387, ¶ 13, (Ct. App.). This distinction is in place to respect the line between "helpful expert testimony and impermissible comments on credibility." *Schultz v. State*, 957 S.W.2d 52, 60 (Tex. Crim. App. 1997). Because Walczak is not qualified as a physician, she is not permitted to claim the victim's injury was "painful and required medical attention" or to give "her diagnosis." These statements are "outside her medical expertise." *Duchene,* ¶ 13.

Fourth, Walczak is not qualified as a psychologist and thus cannot provide conclusions regarding the victim's mental capacity. The Supreme Court of Wisconsin allows *psychologists* to testify about medical conditions, only when "opined to a reasonable degree of medical certainty . . . *based on [] education, training, experience*, and the facts of the instant case . . . ." 2017 WI 2, ¶ 45, 372 Wis. 2d 525, 888 N.W.2d 816 (2017) (emphasis added). Walczak is not permitted to speak to the "child's capacity to understand," or his ability to "refuse or resist" because she not a psychologist who has the required "education, training, or experience." *Id*.

Finally, Walczak is not an expert in "fire dynamics." According to the National Institute of Standard and Technology, fire dynamics is defined as "the study of how fires start, spread, and develop." An expert is one who has specialized 'knowledge, skill, experience, training, or education.' Expert testimony should only be used if it will help the jury better understand the evidence, [and] the 'testimony is based on sufficient facts or data.'" *Kolzlov v. Associated Wholesale Grocers, Inc.*, 818 F.3d 380, 394 (8th Cir. 2016)(citation omitted).

Walczak is not permitted to claim "there was certainly the potential for a more serious burn if his clothes caught fire," because she does not possess any "knowledge, skill, experience, training, or education" in the realm of fire dynamics. *Id*.

For these reasons, the state's proposed expert testimony must be excluded.

LEGAL STANDARD

Wis. Stats. § 907.02 governs the entry of expert testimony.

This statute provides:

> (1) If scientific, technical, or other specialized knowledge will *assist the trier of fact* to understand the evidence or to determine a fact at issue, a witness qualified as an expert by *knowledge, skill, experience, training, or education*, may testify in the form of an opinion or otherwise, if the testimony is *based upon sufficient facts or data*, the testimony is the *product of reliable principles and methods*, and the witness has applied the principles and methods reliably to the facts of the case. (emphasis added).

The function of this statute is to make trial judges "gatekeepers" who determine the admissibility of evidence concerning expert testimony. This state statute can be compared to its federal counter part, Rule 702 of the Federal Rules of Evidence, as applied in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 [143 L. Ed. 2d. 238] (1993). In *Daubert*, the court rejected the outdated *Frye* "General Acceptance" rule—evidence can be admitted if it is generally accepted in the scientific community in which it lives. Instead, the court applied Rule 702 of the Federal Rules of Evidence and declared that evidence must be scientific, relevant, and reliable. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 [143 L. Ed. 2d 238] (1999), extended the scope of *Daubert*, asserting that evidence does not need to be scientific in nature to be admissible.

In other words, all expert testimony may be admitted if it is relevant and *reliable*. In 2000, an amendment to Rule 702 in response to *Daubert* affirmed that all expert testimony is

admissible—not just science—and further clarifies that Rule 104(a) governs the admissibility of expert testimony. Under that Rule, the proponent has the burden of establishing the admissibility requirements are met by a preponderance of evidence. Fed. R. Ev. 702.

ARUGMENT

I. The Court must conduct a hearing at which time the state must introduce and describe its expert testimony in sufficient detail to permit the court to exercise its gatekeeper function.

According to the Proffer, the testimony of the state's expert witnesses will be in the form of opinions. These opinions come in the form of conclusions and are not permitted to be given because they are unsubstantiated and encroach on the court's role to reach legal conclusions. Further, the proposed testimony is not based upon "sufficient facts or data" and is not based on "reliable methods or practice." Nurse Walczak's opinions are not supported by experience, facts, data, peer review, publication, or are generally accepted practices. Finally, she is not qualified as an expert as a physician–precluding medical diagnosis and conclusions. She is also not qualified as a physician, barring opinions on mental capacity of the victim. Lastly, she is not an expert in "fire dynamics," excluding her opinions on the nature of fire and how it spreads.

Instead, the court is asked to rely on Ms. Walczak's opinions, ignoring the fact that she is not a clinical psychologist, physician, or expert in fire dynamics.

A. Expert Witnesses are not permitted to give conclusionary testimony.

"[O]pinion testimony that states a legal standard or draws a legal conclusion by applying law to the facts is generally inadmissible." *United States v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006). Walzcak drew legal conclusions by stating in her medical report "[t]his was a reckless, intentional act" and by further claiming "exam findings are definite/diagnostic for abuse." The

issues with these statements are (1) Walczak cannot speak to the defendant's mindset with words such as "intentional" and "recklessly," and she cannot say this was a abuse with certainty.

The test to identify a legal conclusion is whether "the terms used by the witness have a separate, distinct, and specialized meaning in the law different from that present in the vernacular." *McIver*, at 562 (quoting *United States v. Barile*, 286 F.3d 749, 760 (4th Cir. 2002). The terms "intentionally," "recklessly," and "abuse" have special meanings in the eyes of the law. "Intentionally" and "recklessly" speak to the mindset of an individual and are important considerations in charging and sentencing. Further, allowing Walczak to come to the "definite" conclusion of abuse usurps the role of the court. To allow Walczak to give opinions on the mindset of another or make dispositive claims of abuse would mislead or confuse the jury, because the terms she is using have separate legal meanings.

Because the testimony offered by the witness is in the form of conclusions, it directly contradicts the language of the reliability requirement in Wis. Stats. § 907.02. "Reliability" requires that a proffered expert's testimony "be based on the methods and procedures of science rather than on subjective belief or unsupported speculation." *Castagna,* at 3 (citation omitted). If the testimony does not rely on proper technique or principle, then it fails to assist the trier of fact and therefore, fails the reliability requirements. *Id*. (citation omitted). Nobody can speak to the mindset of the defendant, making Walczak's claims unsupported by "methods and procedure" and mere "unsupported speculation." *Id*. Walczak's testimony must be limited to procedures and methods based upon facts and data.

B. The proposed testimony is not "based upon sufficient facts or data" and is not the "product of reliable principles or methods," pursuant to Wis. Stats. 907.02.

"[T]estimony [must be] based upon sufficient facts or data, [and] the product of reliable principles and methods." Wis. Stats. § 907.02. Further, Clinical experiences "must be examined

with care and objectively tested" before they may be presented to a jury to win a conviction. *J.L.G,* at 291. There is nothing to indicate that Walczak has compared the medical report findings to that of other abuse cases, used reliable methodology, or has objectively tested her opinion. In fact, the report authored by Waczak herself does not indicate physical signs of child abuse.

Because she has no identifiable principles or methods to ensure her opinion accurately represents child abuse, the court is left with questions such as, what signs consistently show abuse? Is Ms. Walczak aware of these common signs and is she referencing them? Is child abuse common when there are no physical signs of abuse? Finally, why does the state feel Ms. Walzcak qualifies as an expert? A published study in *State v. J.L.G*. informs the court there are "no behaviors or symptoms that reliably distinguish an abused child from a non-abused one," making the concept of "common practice" more difficult to establish. *Id*.

Additionally, the basis for her opinions has not been published, peer reviewed, or researched with a control group. If there are studies to be offered, factors indicating accuracy such as the sample size and margin of error are nowhere to be found. This shows the court that the proposed testimony is based on opinion and not objective facts or data. It would be improper for the court to determine that Walczak's experience alone makes her statements credible, because there is no standard to compare the testimony to, pushing it even more into the realm of anecdotal, unsubstantiated opinion.

C. Walczak is not qualified "as an expert" as a physician, psychologist, or in fire dynamics.

If the expert is relying only on their own experience, they must prove "how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is accurately and reliably applied to the facts." *Hoy v. DRM,*

2005 WY 76, ¶ 23, 114 P.3d 1268, 1283 (2005). When a witness is testifying about a medical issue and relies on experience to make them an expert in the eyes of the court, they must have specific medical experience in that niche area. *United States v. Frazier*, 387 F.3d 1244, 1252, 1256, 1273, 17 Fla. L. Weekly Fed. C 1132 (11th Cir. 2004). "T]he proponent of expert testimony always bears "the burden to show that his expert is 'qualified to testify competently regarding the matters he intended to address [and] [] the methodology by which the expert reached his conclusions is sufficiently reliable." *Frazier*, at 1260. (citation omitted).

1. Physician

Wis. Stats. § 441.001 describes professional nursing responsibilities as:

> (a) [t]he *observation and recording* of symptoms and reactions, (b) the execution of procedures and techniques in the treatment of the sick *under the special supervision or direction of a physician*, (c) general nursing procedures and techniques, and (d) the supervision of a patient and the supervision and direction of licensed practical nurses and less skill assistants." (emphasis added).

Nowhere in § 441.001 are nurses given the responsibility of diagnosing patients or coming to medical conclusions. It is important to note there is a distinction between the power a *nurse* must make a diagnosis, and the power a physician possesses to make a diagnosis. "A nursing diagnosis identifies signs and symptoms to the extent necessary to carry out the nursing regimen. It does not, however, make final conclusions about the identity and cause of the underlying disease." *Flanagan v. Labe*, 547 Pa. 254, 258-59, 690 A.2d. 183, 186 (1997).

Nurses are prohibited from testifying specifically on the issue of medical diagnosis, "because that matter is outside [their] medical expertise." *Duchene*, ¶ 13. Thus, Walczak does not have the standing to claim this injury "required medical attention," or that the injury was "definite/diagnostic for abuse," because these conclusions are outside of her medical expertise. Further, she has not provided how her experience as a nurse lead her to these diagnoses, why her

experience as a nurse gives her the same power as a physician to make diagnosis, and how the conclusion of abuse applies to the instant facts. It is important to note the medical report given to defense counsel shows no signs of physical abuse. Finally, Nurse Walczak is required to show she has experience in the niche area of her opinions. The burden is on the proponent to show they are qualified to testify based on reliable methodology and this burden has not been met.

2. Psychologist

The Supreme Court of Wisconsin allows *psychologists* to testify as to a medical condition, but only when "opined to a reasonable degree of medical certainty that, *based on [] education, training, experience*, and the facts of the instant case . . . ." 2017 WI 2, ¶ 45, 372 Wis. 2d 525, 888 N.W.2d 816 (2017) (emphasis added). Walczak has not proven to the court that she has any education, training, or experience to the court. Because of this, she is barred from speaking to the "child's capacity to understand" or his "ability to refuse or resist."

3. Fire Dynamics Expert

As previously stated, fire dynamics is defined as "the study of how fires start, spread, and develop." To be an expert in a field one must possess specialized 'knowledge, skill, experience, training, or education." *Kolzlov*, at 394. Walczak has not proven to the court that she is qualified to testify based on reliable methodology in the realm of fire dynamics. The medical report given to the defense continues with "[t]here was certainly the potential for a more serious burn if his clothes caught on fire." First, there is nothing to indicate Walczak has any expertise in the spread, damage, or patterns of fire. Further, statements like this require more clarification: How likely are clothes to catch on fire in this case, with the clothes worn by the victim? How much more severe will the injuries be? Are clothes catching on fire a legitimate fear with so little flammable material?

II. The state's summary fails to provide the defense with adequate notice of the witness's testimony.

The statute pertaining to discovery demands the state provide "a written summary of . . . the subject matter." Wis. Stats. § 971.23(1)(e), Wis. Stats. The "summary" offered by the state in this case is grossly inadequate and does not reasonably inform the defendant of the proffered testimony. As discussed above, the state has left numerous questions unanswered. Because of this, the "summary" does not comply with the discovery statute cited above and does not permit the defendant to effectively cross-examine. If the defense cannot properly cross-examine a witness, due to the state providing an ineffective summary, their right to confrontation and to present a defense is violated. *Holmes v. South Carolina* informs the court, "the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense" 547 U.S. 319, 324 (2006).

Therefore, based on the above facts and legal authorities, the defendant moves the Court to (a) exclude the witnesses' testimony and (b) schedule a pretrial Daubert hearing to determine admissibility.

III. If the expert is allowed to testify, the court should order that the expert be examined in the form of hypothetical questions with an accompanying cautionary instruction.

In *State v. Jensen*, the court recognized the issue that, based on expert testimony, the jury can be erroneously led to believe that merely because complainant failed to report the assault immediately that the assault naturally occurred, because not immediately reporting is "common practice" with victims. Because of this, the court "suggest[s] that such opinion testimony be elicited in the form of a hypothetical question coupled with a cautionary instruction to the jury." 141 Wis. 2d. 333, 339, 415 N.W.2d 519 (Ct. App. 1987). These steps can help mitigate unwarranted assumptions by the jury. Thus, if the court permits Walczak to testify in the present

case, the court must also order that they be examined through hypothetical questioning and the jury be instructed to proceed with caution before each witness testifies.

Dated at Milwaukee, Wisconsin dated with 25th day of June, 2021.

SCHIRO CRIMINAL DEFENSE
Attorneys for the Defendant.

By: _____
John S. Schiro
State Bar No [redacted]

P.O. Address:
111 East Wisconsin Avenue
Milwaukee, WI 53202
414.224.1411 FAX
John@jschiro.com

Applicant Details

First Name	**Taaj**
Last Name	**Robinson**
Citizenship Status	**U. S. Citizen**
Email Address	**taajrob1123@gmail.com**
Address	**Address** **Street** **7410 Ridge Boulevard** **City** **Brooklyn** **State/Territory** **New York** **Zip** **11209** **Country** **United States**
Contact Phone Number	**732-213-0550**

Applicant Education

BA/BS From	**Rutgers University-New Brunswick/ Piscataway**
Date of BA/BS	**May 2014**
JD/LLB From	**University of Pennsylvania Carey Law School** **https://www.law.upenn.edu/careers/**
Date of JD/LLB	**May 14, 2018**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**University of Pennsylvania Journal of Constitutional Law**
Moot Court Experience	**No**

Bar Admission

Admission(s)	**New York**

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Mayeri, Serena
smayeri@law.upenn.edu
215-898-6728
Katz, Leo
lkatz@law.upenn.edu
215-898-9334
Ramirez, Lily
lramirez@kasowitz.com

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Taaj J. Robinson
7410 Ridge Boulevard
Brooklyn, New York 11209
(732) 213-0550

March 30, 2023

The Honorable Judge Irma Carrillo Ramirez
United States District Court, Northern District of Texas
1100 Commerce Street
Dallas, Texas 75242

Dear Honorable Judge Ramirez:

I am a 2018 graduate of the University of Pennsylvania Law School and am writing to request your consideration of my application for a two-year term clerkship position beginning in August of 2023. As a litigation associate with Lewis Brisbois, I researched complex issues such as the duties manufacturers and distributors have towards consumers, what constitutes a defective product, comparative fault, breach of material contract terms, express and implied warranty, and usury. In addition to researching these complex issues, I composed written memoranda for supervising partners explaining the nuances of the posed legal question. And I composed motions to dismiss, motions in limine, and portions of motions for summary judgment.

During my time as an attorney at the DA's Office, my great honor was to advocate on behalf of child victims and victims of sexual abuse, where I addressed a variety of legal and procedural issues while strategically utilizing time and resources. As an advocate, I composed a wide variety of responsive motions, including motions to dismiss and suppress evidence. Through this work, I was able to hone my oral advocacy skills and grow accustomed to working effectively in high pressure situations by frequently making arguments in court.

As a judicial intern during law school, I was challenged to think analytically, research and write skillfully, and to communicate persuasively. Through my work as an Associate Editor of the Journal of Constitutional Law, I strengthened my editing, organizational, and leadership skills. Coursework in appellate advocacy taught me how to research and write with diligence and precision.

I am enclosing my resume, transcript, and one writing sample. Letters of recommendation from Lily Ramirez, Esq. (lramirez@kasowitz.com, 352-275-6421), Professor Leo Katz (lkatz@law.upenn.edu, 215-898-9334), and Professor Serena Mayeri (smayeri@law.upenn.edu, 215-898-6728), are also included. Please let me know if any other information would be useful. Thank you.

Respectfully,

Taaj J. Robinson

Taaj J. Robinson
7410 Ridge Blvd, Brooklyn NY 11209 | taajrob1123@gmail.com | 732-213-0550

EDUCATION

University of Pennsylvania Law School, Philadelphia, PA
J.D., May 2018
Honors: 2022 New York Top 40 under 40—The National Black Lawyers
Associate Editor, *University of Pennsylvania Journal of Constitutional Law*
Activities: Certified Legal Intern, Civil Practice Clinic
Civil Rights Law Project
Penn Housing Rights Project
Black Law Students Association

Rutgers University-New Brunswick, New Brunswick, NJ
B.A., *magna cum laude*, Political Science, May 2014
Honors: School of Arts and Sciences Excellence Award
Pi Sigma Alpha (National Political Science Honor Society)
Activities: Rutgers University Debate Union

EXPERIENCE

Lewis Brisbois Bisgaard & Smith LLP, New York, NY Nov. 2021–Jan. 2023
Litigation Associate (Am Law 100)
Performed legal research in a wide range of litigation matters including product liability, general liability and contract disputes; composed memoranda on various legal issues; composed motions to dismiss and motions in limine; managed and prepared discovery responses for complex federal cases, including composing written responses regarding requests for production and interrogatories; researched and drafted pleadings; developed legal arguments for court appearances on behalf of a supervising partner; analyzed and summarized key documents for defending depositions.

Brooklyn District Attorney's Office, New York, NY Oct. 2018–June 2021
Assistant District Attorney, Special Victims & Domestic Violence Bureaus (appointed to be a member of the Racial Justice Task Force by District Attorney Eric Gonzalez)
Conducted extensive legal research on a variety of issues; composed responses to motions for discovery and to suppress evidence; prepared legal documents for discovery; interviewed and advised victims, eyewitnesses, and police witnesses; negotiated resolutions with opposing counsel, participated in settlement conferences with criminal court judges, and advocated on behalf of child abuse survivors, sexual abuse survivors and domestic abuse survivors in trial courts and hearings.

Philadelphia Court of Common Pleas, Philadelphia, PA July 2016–Aug. 2016
Judicial Intern to the Honorable Sierra Thomas Street
Researched and composed memoranda on various legal topics, including motions to suppress evidence, sufficiency and weight of evidence, and drug possession. Reviewed motion, pre-trial, trial, and post-sentence documents for opinion writing, and wrote drafts of legal opinions. Summarized case law pertinent to draft opinions and key facts of the case to the law clerk.

BAR ADMISSION

New York (admitted 2019)

Taaj Robinson
University of Pennsylvania Law School

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Wax, A	B	4.0	
Contracts	Hoffman, D	B-	4.0	
Torts	Feldman, E	B-	4.0	

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Administrative Law	Zaring, D	B-	3.0	
Constitutional Law	Roosevelt, K	B-	4.0	
Criminal Law	Katz, L	B+	4.0	
Privacy	Yoo, C	B	3.0	

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Corporations	Bratton, W	B-	4.0	
Employment Discrimination	Mayeri, S	B+	3.0	
Political Philosophy of the Founders	Ewald, W	B+	3.0	
Property	Parchomovsky, G	A-	3.0	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Complex Litigation	Burbank, S & Scirica, A	B	3.0	
Judicial Decision-Making	Scirica, A	A	3.0	
Political Authority & Political Obligation	Perry, S	A-	3.0	
Professional Responsibility	Perry, J	B-	3.0	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Appellate Advocacy	Duncan, M	A-	3.0	
Civil Practice Clinic: Fieldwork	Rulli, L	B+	5.0	
Civil Practice Clinic: Tutorial	Rulli, L	A-	2.0	
Evidence	Rudovsky, D	B+	4.0	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS

Constitutional Criminal Procedure	Rudovsky, D	B+	3.0
Election Law	Goldfeder, J	B	2.0
Employment Law	Das Acevedo, D	B-	3.0
Intro to Philosophy of Law	Perry, S	A-	3.0
Law and Morality of War	Finkelstein, C	B-	3.0

Grading System Description
Beginning with the Fall 2002 semester, the Law School grading system is as follows: A+, A, A-, B+, B, B-, C, F, F (No Credit)

Taaj Robinson
Rutgers University-New Brunswick/
Piscataway Cumulative GPA: 3.83

Fall 2010

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
EXPOSITORY WRITING		B+	3.0	
FINITE MATHEMATICS		A	3.0	
THEATRE APPRECIATION		A-	3.0	
UNDERSTANDING POLITICS		A	3.0	
DEANS LIST				

Spring 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
HONORS SEMINAR: GREAT IDEAS II		B+	3.0	
INTRO TO AMERICAN POLITICS		B+	3.0	
INTRO TO PSYCHOLOGY		A	3.0	
THE POLITICAL SYSTEMS-THEORIES/THEME		B	3.0	
UNDERSTANDING LITERATURE		A	3.0	
DEANS LIST				

Fall 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
AMERICAN POLITICAL THOUGHT		A	3.0	
ETHNIC AMERICA		A	3.0	
INTRO TO INTERNATIONAL RELATIONS		B+	3.0	
PLANET EARTH		B	3.0	
SOUL BELIEFS		B+	3.0	
STDNTS IN TRANSITION		PA	3.0	
DEANS LIST				

Spring 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
AMERICAN FOREIGN POLICY		A	3.0	
AMERICAN PARTY POLITICS		A	3.0	
INTRO TO ETHICS		A	4.0	
INTRO TO HUMAN EVOLUTION		B	4.0	

LOGIC REASONING & PERSUASION		A	3.0	
DEANS LIST				

Fall 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
AMERICAN PRESIDENCY		A	3.0	
CONGRESSIONAL POLITICS		A	3.0	
INTRO TO LOGIC		A	3.0	
INTRO TO PHILOSOPHY		A	3.0	
WOMEN & AMERICAN POLITICS		A	3.0	
DEANS LIST				

Spring 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
AMERICAN RACE RELATIONS		A	3.0	
DESCARTES, LOCKE & 17TH CENTURY PHILOSOPHY		B+	3.0	
DEVELOPMENT OF THE US II		A	3.0	
SOCIAL & POLITICAL PHILOSOPHY		B+	3.0	
SOCIOLOGY OF WOMEN		A	3.0	
Pi Sigma Alpha (National Political Science Honors Society) DEANS LIST				

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
AMERICAN LEGAL HISTORY		A	3.0	
CURRENT MORAL & SOCIAL ISSUES		A	3.0	
DEVELOPMENT OF THE US I		A	3.0	
MINORITY GROUPS IN AMERICAN SOCIETY		A	3.0	
PLATO AND ARISTOTLE		A	3.0	
DEANS LIST				

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
AMERICAN REVOLUTION		A	3.0	
INTRO TO SOCIOLOGY		A	3.0	
LAW & POLITICS		A	3.0	

MARX AND MARXISM	B+	3.0
POLITICAL SCIENCE SEMINR SUB TOPIC: GENDER, RACE & US POLITICS	A	3.0

DEANS LIST
SCHOOL OF ARTS AND SCIENCES EXCELLENCE AWARD

Grading System Description

A,A-,B+, B, B-, C+, C, C-, D+, D, D-, F

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 30, 2023

The Honorable Irma Ramirez
Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street, Room 1567
Dallas, TX 75242

Re: Clerkship Applicant Taaj Robinson

Dear Judge Ramirez:

It is with pleasure and enthusiasm that I write to recommend Taaj Robinson for a clerkship in your chambers. Mr. Robinson's intellect, writing ability, and work ethic, as well as his experience with various stages of litigation as an assistant district attorney, should serve him very well as a law clerk. Mr. Robinson's engaging personality, professionalism, and responsiveness to feedback are qualities that will make him an asset to the judge fortunate enough to hire him.

I came to know Mr. Robinson when he was a student in my Employment Discrimination class in the Fall of 2016. Always impeccably prepared when called upon, Mr. Robinson made insightful contributions to class discussions throughout the semester. Grades in my course are based almost entirely upon an anonymously graded, two-part, 24-hour takeaway examination. The first part of the exam is an issue-spotter that requires students to identify potential legal claims, apply the law to an intricate fact pattern, and make compliance recommendations to a hypothetical employer. The second part is a more open-ended essay question that asks students to make descriptive and normative judgments about the field of employment discrimination law.

Mr. Robinson's performance on both parts of the exam was strong. His answers demonstrated a solid grasp of doctrine, excellent organization, and an accessible, persuasive writing style even under time pressure. His policy analysis revealed Mr. Robinson to be a sophisticated thinker who is able to synthesize large bodies of material and produce a cohesive argument. My review of his exam and writing samples leaves me favorably impressed with Mr. Robinson's analytical acumen, clarity of exposition, and attention to detail. Based on my observations, I believe that the As and A-minuses on his transcript are more indicative of his abilities and potential as an attorney and judicial law clerk than the weaker marks sprinkled throughout.

Mr. Robinson's achievements are all the more impressive given that he did not come to law school with the advantages many of his classmates enjoy. Mr. Robinson is a first-generation college student who lived in public housing as a child. He credits his mother, who raised him on her own, with instilling in him a passion for education and a strong sense of responsibility for giving back to the community.

At Rutgers University, Mr. Robinson compiled a superior academic record, graduating magna cum laude with a degree in political science. He also spent hundreds of hours volunteering at the Trenton YMCA, mentoring elementary school students, and participated in voter registration drives and political campaigns. At Penn Law, Mr. Robinson continued to devote time to service in the public interest. As part of the Civil Rights Law Project, he researched and wrote a report about the constitutional parameters of public school funding inequities. He also advocated on behalf of individuals facing eviction through the Penn Law Housing Project.

Mr. Robinson's passion for public service continues with his postgraduate work as an Assistant District Attorney in Brooklyn, where he prosecuted cases through the Special Victims and Domestic Violence Bureaus. Most recently, he has served as an associate at Lewis Brisbois, where he was recognized as a National Black Lawyers' Top 40 Under 40. He hopes to hone his litigation skills through a judicial clerkship in order to achieve his eventual ambition of serving in a U.S. Attorney's office.

In addition to his many accomplishments, Mr. Robinson's warmth, enthusiasm, and wry sense of humor make him a pleasure to have around. In short, his application for a judicial clerkship has my strong endorsement.

Thank you very much for your consideration. If there is any further information or assistance I can provide, please do not hesitate to contact me.

Sincerely,

Serena Mayeri
Professor of Law and History
Tel.: (215) 898-6728
E-mail: smayeri@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 30, 2023

The Honorable Irma Ramirez
Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street, Room 1567
Dallas, TX 75242

Re: Clerkship Applicant Taaj Robinson

Dear Judge Ramirez:

I am writing to bring to your attention Mr. Taaj Robinson, whom I got to know as a first year student at the University of Pennsylvania in my second semester criminal law class. He impressed me from the very beginning with the enthusiasm and aptness of his in-class comments, and he did well on a very demanding final exam. I got to know him a little more through out-of-class contacts and got to have some sense of the determination and remarkable talents that have propelled him from the humblest of beginnings to where he is now. His combination of smarts, conscientiousness, and a winning personality, as well as his interest in eventually making his mark through some sort of public service—ideally the U.S. Attorney's office—make me predict a stellar career for him. A judicial clerkship seems like just the right step for him to take at this point in his career, and I believe you will find him to be an excellent choice.

Sincerely,

Leo Katz
Frank Carano Professor of Law
Tel.: (215) 898-9334
E-mail: lkatz@law.upenn.edu

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LILY RAMIREZ
DIRECT DIAL: (786) 587-1049
DIRECT FAX: (305) 397-1315
LRAMIREZ@KASOWITZ.COM

Dear Judge,

I am pleased to write this letter of recommendation for Taaj Robinson for a judicial clerkship in your chambers. I had the privilege of working with Taaj for just over a year as his direct supervisor at Lewis Brisbois Bisgaard & Smith LLP, and I can attest to his outstanding legal abilities and work ethic. I worked with Taaj on a daily basis on an account where we represented a client that was involved in complex federal court litigation across the country.

Under my supervision, Taaj was tasked with taking lead in handling our cases from start to finish. He performed tasks such as researching complex legal issues to prepare related briefing, and drafting of discovery responses, discovery motions, motions to dismiss, motions for summary judgment, and motions-in-limine, all of which required minimum to no edits. Taaj consistently demonstrated the ability to analyze complex legal issues and present clear, concise, and persuasive written work product. He possesses strong analytical and writing skills, and excels at identifying legal issues and applying the relevant law to those issues, producing cogent and persuasive legal arguments. Taaj's ability to quickly and accurately cite legal authorities is a testament to his dedication and attention to detail, which are both qualities that are essential for success in a judicial clerkship.

In addition to Taaj's exceptional legal skills, he is also an extremely hard worker, outstanding team player, and a person of great integrity and character. When met with tight deadlines and admittedly a work demand that far exceeded what should have been expected of a junior associate, without hesitation, Taaj routinely stepped up to the plate. Whether it was working with Taaj at 1:00 PM or 1:00 AM, his positivity and can-do attitude was infectious, and he has a unique ability to motivate and inspire others to achieve their best.

Overall, I am confident that Taaj would make an excellent addition to your team as a judicial clerk. His positive attitude, team-playing skills, and exceptional legal abilities make him an ideal candidate for this position. I wholeheartedly recommend Taaj without hesitation, and I am confident that he would make a valuable contribution to your court.

Please do not hesitate to contact me if you require any further information about Taaj or his qualifications.

Sincerely,

/s/ Lily G.E. Ramirez
Lily G.E. Ramirez
LRamirez@kasowitz.com

Taaj J. Robinson
7410 Ridge Blvd, Brooklyn NY 11209 | taajrob1123@gmail.com | 732-213-0550

The attached writing sample is an excerpt from a summary judgment brief analyzing whether, under the First Amendment, an attorney's blog constitutes commercial speech or non-commercial speech and if the government's proposed regulations of the mentioned blog are constitutional. Between the first and second/final draft of this brief, I received brief verbal feedback from a law school professor about possible changes. Some of those suggested possible changes were incorporated within my brief.

INTRODUCTION

Ever since the Supreme Court first extended First Amendment protection to commercial speech, the Court has held that commercial speech is less protected than noncommercial speech and regulation of commercial speech is afforded only intermediate scrutiny. This has allowed governments to continue to fulfill their duty of protecting the public from misleading commercial speech, and to continue to ensure a smooth, safe, and trustworthy marketplace.

The Washington State Bar Association ("Bar Association"), and Glenn Howard in his position as Chief Disciplinary Council, have determined that the blog "Developments in Seattle Criminal Law" ("the blog"), a part of attorney Andrew Schlossberg's website, may be misleading. In total, the blog contains twenty-one articles, sixteen that actually discuss Seattle criminal law. In the sixteen articles, only cherry-picked cases fought and won by Mr. Schlossberg are used. Overall, there were no cases discussed where Mr. Schlossberg was counsel and did not prevail. The Bar Association believes that potential clients reading the blog and in need of legal services will think that Mr. Schlossberg does not lose cases and will then retain his services under false pretenses. This not only creates a risk of further damaging the already low consumer confidence in legal marketing, but also risks damaging vulnerable clients desperate for a solution to their legal problems. As such, the Bar Association required Mr. Schlossberg to implement clarifying measures that would help readers avoid such a mistake. Mr. Schlossberg claims that the Bar Association's proposed regulations violates his First Amendment rights to free speech. Mr. Schlossberg is asking the court for summary judgment on his claims.

The Bar Association opposes Mr. Schlossberg's Motion for Summary Judgment and moves for summary judgment on the grounds that the proposed regulations do not violate the First Amendment rights of Mr. Schlossberg. Speech is commercial speech when it contains an

advertisement and a mentioned product. Speech is also commercial if it is mixed with other noncommercial speech but is not inextricably intertwined with said noncommercial speech. Here, the blog meets that criteria because of its strong marketing of Mr. Schlosberg's services. In the alternative, this blog can be regulated as commercial speech since it is mixed, but not inextricably intertwined, with the rest of the noncommercial speech found on the blog and website. As a result, the regulation is only afforded intermediate scrutiny. Such regulation is constitutional when it directly and narrowly addresses a substantial government need. The Bar Association's proposed regulations meet that threshold since they address directly, and narrowly, the state of Washington's substantial need to protect the public from unscrupulous attorney advertising and ensure the state protects the reputation of its legal industry.

STATEMENT OF THE FACTS

The paramount goals of the Bar Association are to preserve the integrity of the legal profession and to protect the public from unethical or misleading lawyer advertising. (Howard's Dep. 6: 6-8, Ex. A.) The Bar Association is charged with preventing the erosion of the public's confidence and trust in the judicial system. (Howard's Dep. 6: 7-9.) The leader of this office in striving to achieve this aim is my client, Glenn Howard, who is the Chief Disciplinary Counsel of the Bar Association's Seattle office. (Howard's Dep. 2:23.) He has been employed at the Bar Association's Seattle office since 2007 and has been Director of the office since 2012. (Howard's Dep. 2:24-25.)

In conformity with the Bar Association's authority and policies, the Bar Association has found the plaintiff, Schlossberg, in violation of Washington's Rule 7.1 of Professional Conduct pertaining to attorney advertising and communications which prohibits misleading advertising. (Howard's Dep. 5: 8-10.) Rule 7.1 states that an advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented as to lead a

reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters. (The Bar Association's Letter to Schlossberg. 1:2, Ex. B.)

With the end of upholding the public's trust in the legal profession which serves them in mind, the Bar Association's office is responsible for the reviewing, investigating, and prosecuting of grievances about the ethical misconduct of Washington lawyers. (Howard's Dep. 3:1-4.) The Bar Association was alerted to Schlossberg, the Plaintiff, by a former client of his who stated that he was not adequately represented by Schlossberg and was in jail as a result. (Howard's Dep. 4:12-15.) Mr. Schlossberg is a criminal defense attorney in Washington who maintains a website for his firm. (Schlossberg's Dep. 3:1-4, Ex. C.) The website is designed to market the services of his firm: it advertises his availability for legal representation, and it has a link to contact Schlossberg regarding free legal consultation. (Howard's Dep. 4:17-21.) This website contains a blog consisting of twenty-one articles. (Schlossberg's Dep. 4:18-20.) According to Schlossberg, it is a platform where he can discuss and demonstrate his passion for certain criminal law subjects. (Schlossberg Dep. 8:6.) Schlossberg himself admits that it also serves a marketing purpose. (Schlossberg Dep. 8:19-21.) Within the blog's articles, sixteen out of twenty-one discuss Seattle law and they only discuss cases Schlossberg has won. Out of the remaining five articles that do not mention his successful cases, they do not discuss Seattle law.

After investigating, the Bar Association determined that Schlossberg's blog presentation is potentially misleading and could result in viewers believing that he was guaranteeing future success. (Howard's Dep. 6:11-12.) The Bar Association found that Schlossberg's blog was potentially misleading because the articles cover sixteen cases that

Schlossberg has won, and he purposefully neglects to mention cases that he has lost. (Howard's Dep. 6:10-12.)

While Schlossberg's sixteen cases mentioned were all depicted truthfully, he neglected to mention that he has lost cases as well. (Howard's Dep. 5:22.) Potentially misleading advertisements damages the way the public views lawyers and the profession generally. (Howard's Dep. 6:7-9.) The Bar Association's mission to guard the public against misleading attorney advertising is substantiated by studies. (Social Media Executive Summary, Ex. D.) According to the study, it was demonstrated that forty-two percent of the general public believe that attorney advertising promises future success. (Socia Media Executive Summary. at 3.) More than a healthy majority of the public, sixty-four percent, believe that attorney advertisements are less truthful than other types of advertisements. (Socia Media Executive Summary. at 2; (Howard's Dep. 6:14-16.) This can be problematic, especially because a great part of those who seek criminal defense come from less advantaged backgrounds who have less access to information. (Howard's Dep. 7:1-11.) Most attorney advertisements are purposely directed at disadvantaged Americans who otherwise have little contact with lawyers. (Social Media Executive Summary. at 2.) The study also found that twenty percent of disadvantaged households have sought legal counsel or advice through attorney advertising. (Social Media Executive Summary. at 2.) All who seek criminal defense counsel are in a vulnerable position. (Howard's Dep. 7:9-11.) Given these factors, the potential for abuse is acute. (Howard's Dep. 7:11.)

Based on the evidence of the public potentially being misled in viewing Schlossberg's blog, the Bar Association requested that he insert a disclaimer on his blog. The disclaimer would state the word "ADVERTISEMENT" and further state "that the blog does not guarantee future success," while being always visible and having other font requirements. (Schlossberg's

Dep. 9:12.) When Schlossberg was asked why he refused to comply with the disclaimer, he replied that he did not agree with it. (Schlossberg's Dep. 9:7-12.) Schlossberg contends that the disclaimer would undermine the message he is attempting to convince the public to believe and that it would cheapen the other purposes of the blog besides advertising. (Schlossberg's Dep. 9: 16-20.) But the disclaimer requirements are only to make sure that the viewers are not misled and will not alter the blogs content or message; Schlossberg is free to continue writing about his successes. (Howard's Dep. 8:1-3.)

Schlossberg is moving for summary judgment on the issue of commercial speech: he claims that his blog is noncommercial speech. My client Glenn Howard is also moving for summary judgment; we urge the court to find the government regulation in the form of a disclaimer constitutional.

ARGUMENT

The proposed regulation by the Bar Association is regulation of commercial or mixed commercial speech and is constitutional. Despite the extension of First Amendment protection to commercial speech, the courts have made clear that governments have a justified need to regulate commercial speech, as they have always done. Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 455-56 (1978). Thus, government regulation of commercial speech is only afforded intermediate constitutional scrutiny, which allows for regulations within a constitutionally permissible framework. Bolger v. Youngs Drug Products Corp., 463 U.S. 60, 66 (1983). Pure commercial speech is speech that does no more than propose a commercial transaction. Virginia Pharmacy Bd., 425 U.S. 748, 762 (1976). However, speech not purely commercial is considered commercial speech when the speech includes: (1) advertisements; (2) references to a specific product; and (3) economic motivation to the speaker. Bolger, 463 U.S. at 66-67.

Mixed commercial speech can be regulated like pure commercial speech if the noncommercial and commercial portions of the speech are not inextricably intertwined from each other. Bd. of Trs. of the State Univ. of N.Y. v. Fox, 492 U.S. 469, 474 (1989).

Here, the blog is an advertisement because Schlossberg admits that one of his reasons for writing the blog is to market his services. Schlossberg references a specific product with his advertisement because Schlossberg includes this blog as a part of his website which is entirely about his available services. Schlossberg has economic incentive to advertise his services and obtain additional clients. Besides, even if not pure commercial speech, the blog is not inextricably intertwined with the noncommercial speech of the rest of the website. Schlossberg can easily separate the blog from his website and still achieve his noncommercial objectives.

The proposed governmental restriction on commercial speech is constitutional because it is directly and narrowly tailored to serve a substantial governmental interest. Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York, 447 U.S. 557, 564 (1980). The Supreme Court has consistently held that governmental restrictions can be placed on commercial speech. The Court has long recognized and affirmed that there is a substantial governmental interest in regulating unethical attorney conduct. Goldfarb v. Virginia State Bar, 95 S.Ct. 2004, 2016 (1975). For the substantial governmental interest to be directly advanced, the interest must be able to be verified. Florida Bar v. Went For It, Inc., 515 U.S. 618, 634 (1995). For the substantial governmental interest directly advanced to be narrowly tailored, it must reasonably relate to the governmental interest and not be substantially more burdensome than necessary. Zauderer v. Office of Disciplinary Counsel, 105 S. Ct. 2265, 2297 (1985).

Here, Schlossberg's blog constitutes a substantial governmental interest because his presentation of the articles is potentially misleading to the average viewer and risks imperiling

the integrity of the legal profession in the public's eyes. Further, the disclaimer is directly related to that substantial interest because it has been established through several commission studies that without a disclaimer there is great potential that the public will believe that Schlossberg's blog guarantees future success; in letting viewers know that the blog does not predict future success and is an advertisement, the disclaimer specifically engages with the governmental interest. And the disclaimer is narrowly tailored because it reasonably relates to addressing the governmental interest and is not substantially more burdensome than it needs to be.

A. Summary Judgment Standard

Dismissal under the Federal Rules of Civil Procedure 56(e) is based on those instances where a motion for summary judgment is made and supported; an adverse party may not rest upon the mere allegations or denials of his pleading, but his response must set forth specific facts showing that there is a genuine issue for trial. First Nat. Bank of Ariz. v. Cities Serv. 391 U.S. 1575, 1600 (1968). When a party has a summary judgment motion made against her, she cannot solely rely on the allegations in the complaint. Id. at 1592. Instead, she must show that there is enough evidence to warrant the case going forward to trial. Id. There is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party. Id.

B. The Bar Association may regulate the blog because it satisfies the Bolger factorsand is therefore commercial speech, or because it is mixed commercial speech which is not inextricably intertwined with noncommercial speech and there is no meaningful nexus between the two forms of speech.

The blog is commercial speech because Schlossberg writes the blog to market his services, and he references his services, with economic incentive. Indeed, the blog is commercial

speech because it is mixed with commercial speech and not inextricably intertwined with noncommercial speech. Although there are no bright line rules delineating precise boundaries between commercial and noncommercial speech, there is a "common sense" distinction between regular noncommercial speech and speech that does no more than propose a mere commercial proposal. Ohralik, 436 U.S. at 455. Speech is considered commercial speech when it includes: (1) advertisements; (2) references to a specific product; and (3) economic motivation to the speaker. Bolger, 463 U.S. at 66-67. Speech that is mixed with commercial speech but not inextricably intertwined with noncommercial speech can be regulated as if it is purely commercial speech. Fox, 492 U.S. at 474. Here, the blog acts as an advertisement: selling Mr. Schlosberg's services. Hence, the speech is considered commercial and can be regulated as such. Because the commercial and noncommercial elements of the blog and website are easily separated, they are not considered inextricably intertwined. So, even if not considered to be fully commercial speech, the blog would still be subject to regulation under only intermediate scrutiny.

1. Mr. Schlossberg's blog is commercial speech because it satisfies the Bolger factors.

The blog is commercial speech because Schlossberg writes the blog to market his services, he references those services, and he has economic incentive. When speech is not merely proposing a commercial transaction, it is classified as commercial if the speech includes: (1) advertisements; (2) references to a specific product; and (3) economic motivation to the speaker. Bolger, 463 U.S. at 68. When speech has some advertising embedded within it, the entire speech can satisfy the advertising requirement when the advertising component touts its own products and is more than at least fifty percent of the material. Dex Media v. Seattle, 696 F.3d 952, 957 (9th Cir. 2012). In Dex Media, the court held that a phone book which contains editorial

noncommercial components is not considered to contain an advertisement despite the pure commercial advertisements contained throughout the phone book. Id. The court explained that such a phone book is qualitatively different from a circular containing an advertisement that exclusively touts its own product with over fifty percent of its overall material advertisements.

Here, like a standard advertising circular, the blog prominently and exclusively touts Mr. Schlossberg's product-his legal services. It does this through utilizing only the cases which he won, in order to market his services. The sixteen of twenty-one articles that try to market those services make up most of the blog, more than the fifty percent threshold mentioned by the court. Id. Thus, the marketing aspect of the blog which utilizes a large majority of the articles to market Mr. Schlossberg's services, like a standard circular, satisfy the advertising factor required by the court in Bolger.

By the blog trying to market Mr. Schlossberg's services, it references a product with economic incentive. In Am. Acad. of Pain Mgmt. v. Joseph, 353 F.3d 1099, 1105 (9th Cir. 2004), the court held that a doctor's letterhead that would potentially help obtain new business satisfies the requirement in Bolger to mention a specific product with economic incentive. The court explained that promoting medical services is referencing a product and that attempting to grow a client base is an economic incentive. Id. Here, like the doctor, Mr. Schlossberg is offering clients his services. Therefore, referencing those services in attempting to grow his client base is Mr. Schlossberg referencing a product with economic incentives.

2. Schlossberg's blog is mixed commercial speech subject to regulation and not inextricably intertwined because there is no inherent nexus between the commercial and noncommercial speech.

The blog is subject to regulation because even if it is protected speech, it was mixed with the core commercial speech of the website and is not inextricably intertwined. If fully protected speech is inextricably intertwined with commercial speech, then the speech will be fully protected and regulation would be reviewed under strict scrutiny. Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc., 487 U.S. 781 (1988). This said, if the commercial speech is easily detached from the noncommercial speech, then it is not inextricably intertwined and will retain its commercial characterization. Fox, 492 U.S. at 474. Speech intertwined with commercial speech that helps facilitate enhanced sales still is not considered inextricably intertwined. Hunt v. City of Los Angeles, 638 F.3d 703, 716 (9th Cir. 2011).

Courts look to see if protected speech is inextricably intertwined because of a law or of the nature of the speech. Fox, 492 U.S. at 474-475. If it is not, then courts will subject all the speech to a lesser standard of protection since the speaker can detach the more protected speech from the commercial speech. Id. In Fox, the Court afforded a commercial speech standard of review to the mixed speech of students selling products from their dorm room in violation of school policy. Id. The students mixed their commercial speech with noncommercial home economic discussions. Id. The Court held their fully protected noncommercial speech of home economics was not inextricably intertwined. Id. The Court analogized to where an advertiser inserts issues of public debate into an advertisement but the speech is still considered commercial speech. Id. at 475.

To be considered inextricably intertwined, the nexus between the commercial and noncommercial speech must be more than just a mere enhancement of value to the commercial speech. Hunt, 638 F.3d at 716. In Hunt, the court ruled that religious and philosophical speech that facilitated the sales of a vendor's items was not inextricably intertwined. Id. The court explained that a nexus is needed between the commercial and noncommercial speech that shows why the noncommercial speech was inherently required. Id. The court further explained that if there is an item that has expression as part of the product, such as graphics on clothing, then that may satisfy an inextricable requirement because the graphics speak directly to the value of the clothing. Id.

Here, like in Fox, if Schlossberg separates his social justice views from his advertised legal services, he would be able to continue selling his services. Home economics information may very well fit with the selling of home appliances, but it is not required. Likewise, here, adding noncommercial speech pertaining to Mr. Schlossberg's personal views on the criminal justice system, is not inherently required to sell attorney services. Also, like in Hunt, the economic benefit that Mr. Schlossberg receives by disseminating his personal views together with the commercial speech is not enough to render the overall speech noncommercial. Unlike expressive graphics on clothing, his views on the system are not an actual part of the attorney services he his selling. Instead, here, the entire economic benefit of combining the speech only serves to further substantiate the concern of the state that readers may make decisions based on false assumptions that result from reading the articles while they are on his website.

1. The Bar Association's proposed regulations are constitutional and constitute permissible regulation of commercial speech because they sufficiently satisfy the Central Hudson test.

The Bar Association's proposed regulations are constitutional because commercial speech is only afforded intermediate scrutiny. Ohralik, 436 U.S. at 455. The regulations satisfy intermediate scrutiny because the state of Washington has a substantial need to protect the vulnerable citizens who seek legal services from obtaining those services under false assumptions. Further, the state has a substantial interest in protecting the reputation of state sanctioned attorneys who represent the states' justice system. The Bar Association with its proposed regulations addressed a specific, identifiable, and known problem. The regulations directly addressed the issue by eradicating the problem on a case-by-case basis. The regulations are a good fit, narrowly constructed, and a reasonable approach to fixing the issue.

Commercial speech is given decreased protection to prevent dilution of the First Amendment and allow the state to protect the public by continuing to regulate commercial speech, as the state has historically always done. Id. Speech is only protected if it is lawful and not

misleading. Central Hudson, 447 U.S. at 564. Yet, when the speech is inherently misleading—calculated by the speaker to deceive by manipulating the information on its face to give incorrect and false information—it is not afforded constitutional protection. See, Friedman v. Rogers, 440 U.S. 1, 14 (1979) (giving an example of misleading when a doctor manipulates the use of trade names to make it seem like patients are under the care of doctors in which they are not). Here, despite the Bar Association's worry that people may extrapolate incorrect assumptions about Schlossberg, his writings are not inherently misconstrued or misleading and are therefore constitutionally protected.

But the state can regulate commercial speech as long as there is: (1) a substantial state need that; (2) is directly addressed by the regulation and; (3) where the regulations do not over extensively regulate the commercial speech. Central Hudson, 447 U.S. at 566. The state has a heightened interest to enforce regulations on its licensed industries, especially its attorneys. Florida Bar v. Went For It, Inc., 515 U.S. 618, 634 (1995). A state has a substantial need to protect the vulnerable who are seeking legal services. Ohralik, 436 U.S. at 463. However, a state cannot just vaguely assert a substantial problem in theory, with no data or common-sense explanation as to why that problem specifically exists within the context of the regulations. Florida Bar, 515 U.S. at 626. Here, the Bar Association is not only dealing with vulnerable members of the public who are seeking legal aid, but it bases its need on empirical data that indicates an already existing public dissatisfaction with attorney advertising. (Task Report. at 2.)

A regulation directly addresses an issue when there is a reasonable certainty the regulation will directly and materially advance the states interest. Florida Bar, 515 U.S. at 626. A state interest can be substantial, but a particular ban can still be seen as not sufficiently addressing the concern. Bates v. State Bar of Arizona, 433 U.S. 350, 379 (1977). A state does not need to wait and address only an instance where their concern already materialized and injury already took place. Rather, the state can proactively regulate to address the concern. Ohralik, 436 U.S. at 464-468. When regulating commercial speech to directly address a substantial state concern, the state should not simply ban the speech, which will only increase public ignorance and halt the spread of information. Bates, 433 U.S. at 373-375. Instead, if possible, the state should allow the speech and address the concern through correcting omissions. Id. Here, the Bar Association created a specific solution customized to address its concern with this specific commercial speech. The regulations are assumed to adequately

satisfy the possible misconceptions that can arise from reading the blog by clearly indicating that the reader is viewing an advertisement. Also, the regulations do not ban any speech but offer the choice to clarify omissions, or to simply separate the blog from the rest of the website. The clarification criteria were mostly garnered from previous regulations used in other forms of electronic attorney advertising.

A regulation is not overly extensive when it is narrowly constructed and the solution is "a fit" in relation to the substantial need of the state. Ward v. Rock Against Racism, 491 U.S. 781, 785 (1989). The Supreme Court no longer holds that for the regulation to be permitted it has to be the least restrictive method possible. Id. The regulation can be permitted even where it is known it will apply wider than the need of the state requires. Id. Here, the Bar Association is only attempting to regulate what they determined is a specific concern for the speech to be misconstrued. The regulations are a perfect fit for the Bar Association's concern and the regulations merely clarify to the reader that they are reading an advertisement. There is no spillover regulation extending to other parties or speech.

2. The regulation addresses a substantial government interest, which is to protect the public from unscrupulous attorney advertising and to protect the reputation of the legal industry.

The Bar has a substantial interest in preventing the public and especially the vulnerable from being misled by attorney advertising. Ohralik, 436 U.S. at 1929. Moreover, the Bar has a substantial interest to regulate attorney advertising in order to preserve the integrity of the legal profession and the public's confidence in the judicial system. Id. at 460. It has firmly been acknowledged that there is a governmental interest in protecting the public from misleading or deceptive practices performed by licensed professionals. Friedman v. Rogers, 99 S.Ct. at 897. It

has even been recognized that state regulation of attorneys is especially important compared to other professionals. Goldfarb v. Virginia State Bar, 95 S.Ct. 2004, 2016 (1975). There is great significance in regulating attorneys because attorneys are essential to the administration of justice; the functioning of the government; and have historically been thought of as officers of the court. Id. at 2016. An advertisement is potentially misleading when it can deceive a large portion of the general public into believing something that is not entirely accurate. Zauderer, 105 S. Ct. at 2297. The Court uses a reasonable person standard to determine whether an average member of the community would be likely to come away with a false impression based on the information provided. Id.

According to the Central Hudson factors, once commercial speech is constitutionally protected, a state must show substantial interest to regulate the speech. Central Hudson, 447 U.S. at 557. Since there is a specific lack of sophistication among the general public concerning legal services, it may require even more stringent regulation. Ohralik, 436 U.S. at 1929. When an attorney's conduct could impair a potential client's decision-making in deciding whether to retain their services, there is a substantial governmental interest in restricting that conduct. Id. at 1920.

In Ohralik, an attorney approached two young victims and attempted to convince them to retain his legal services. Id. The Court held that the attorney's solicitations were unconstitutional because they impaired vulnerable potential clients' attorney decision-making process. Moreover, the Court reasoned that this process was antithetical to the professional standards that lawyers are held to. Id.

Here, like in Ohralik, the regulation is attempting to prevent the public from making an impaired, uninformed decision. The blog is potentially deceptive to the general public and even more so for the less advantaged individuals it targets. Like in Ohralik, here, the

government regulation is striving to protect vulnerable potential clients from attorneys and to protect the integrity of the profession. There is an established substantial governmental interest in guarding the public against attorney deception through appropriate restriction. Thus, because Schlossberg's blog is a potentially deceptive attorney advertisement, there is a substantial interest.

3. The regulation directly addresses the substantial interest by requiring the blog clarify that it is an advertisement.

The regulations directly address the substantial governmental interest because the regulations specifically engage with that interest. By clarifying for the viewer that the content is an advertisement, potential clients will be placed on guard about what they are viewing and will be suspicious pertaining to the veracity of the blog's contents. Further, the state interest to protect the public and the reputation of its attorney industry is directly addressed by the regulation because viewers will not feel as though they were trying to be deceived and will know that their interests were being advanced via the disclaimer.

Even if a state has a substantial interest, it can only manifest into a need which permits state regulation if the concern is shown to be verified and not just a hypothetical scenario that is not actually in need of regulation. Florida Bar, 515 U.S. at 626. If the state's concern is not confirmed, then it cannot be certain the regulation is in fact addressing anything at all. Id. In Florida Bar, the Court upheld the right for a state to prohibit direct mail attorney advertising for the duration of thirty days following an accident. Id. at 626. The chief concern was to protect the privacy of accident victims and safeguard the reputation of attorneys. Id. Although the Court found it obvious that the concerns were substantial, the Court held it needs to be shown that in this specific context those concerns would be realized without the regulation. Id. at 626. If the

concern of the state was just an abstract hypothetical, then regulation would never be able to demonstrate how the regulation directly addresses the state's need. Id. But the Court held that a thorough study of poll driven data that indicated public consensus matching the concerns of the state was enough to accept the states assertions that regulation was needed. Id. In Edenfield v. Fane, 507 U.S. 761 (1993), the Court overturned a Florida ban on in-person CPA advertisements. The state claimed the statute was to prevent fraud and to protect the industry from a negative perception. Id. at 768. Despite the Court recognizing that the concern to prevent fraud was a substantial interest, because there was no indication that any of the concerns would materialize without the regulation, the Court did not permit the regulation to stand. Id. at 761.

Here, the Bar Association has included with this motion its commissioned report detailing that twenty percent of low-income households that had retained legal counsel, had found them through attorney advertisements. (Task Report. at 2.) The survey also shows that over forty percent of the public believe that attorney advertising predicts future success. And over thirty percent of those surveyed believe that an advertisement is less likely to be true simply because it is advertising attorney services. Like in Florida Bar, the survey legitimizes the concern of the Bar Association. It demonstrates the vulnerability of the clients targeted by attorney advertising, and the need to urgently protect the reputation of attorneys in Washington.

Unlike in Edenfield, the state of Washington is not asserting an unverifiable concern and attempting to regulate commercial speech unchecked. Unlike in Florida Bar, here, the Bar Association did not cite anecdotal evidence backing up the study. Rather, here, as in Florida Bar, Schlossberg did not submit any evidence opposing the study, or even any evidence purporting to show that the Bar Association's concerns are illegitimate.

4. The proposed regulations are not overly burdensome because they do not need to be the narrowest possible, the regulation continues to permit the content, and only requires additional clarification.

Schlossberg's insertion of a disclaimer is narrowly tailored because it only serves the governmental interest of protecting the public from deception and is not needlessly burdensome. For commercial speech to be constitutionally restricted, the restriction must be narrowly drawn. Central Hudson, 100 S.Ct. at 2351. Although speech restriction does have to be narrowly drawn, it does not have to be the least restrictive means in doing so. Ward, 109 S.Ct. at 2764. The government thus has leeway in ordering a restriction. Id. Only when the restriction is substantially broader than necessary to serve to governmental interest is the restriction considered too expansive. Id. A disclaimer issued by the Bar is considered a narrowly tailored restriction when advancing a direct, substantial interest. Zauderer,105 S. Ct. at 2297.

In implementing a narrowly tailored restriction, the government can do so proactively before harm results. Id. In Zauderer, attorneys disseminated an advertisement to potential clients which read, "if there is no recovery, there is no legal fees owed to clients." Id. There, the attorney advertisement neglected to mention the fact that "legal costs" are distinct from legal fees. Id. The Court held that the general public is unlikely to know the distinction between legal fees and legal costs. To avoid the public from being misled by an attorney advertisement, the Court held the Bar's disclaimer was narrowly tailored to advance a governmental interest. Contra, Bates, 97 S.Ct. at 2709 (holding that a total ban of attorney advertisements in newspapers to prevent potentially misleading attorney advertisement was not narrowly tailored).